



# HOME RENTAL REHABILITATION ADMINISTRATORS' PROCEDURAL MANUAL

May 2009

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# TABLE OF CONTENTS:

<b>COMPLIANCE WITH FEDERAL AND STATE REQUIREMENTS .....</b>	<b>1</b>
<b>INTRODUCTION.....</b>	<b>2</b>
MISSION STATEMENT .....	2
BACKGROUND.....	2
<b>CHAPTER 1 – PROGRAM DESCRIPTION .....</b>	<b>3</b>
<b>CHAPTER 2 – PARTICIPATION PROCEDURES.....</b>	<b>4</b>
APPLICATION FOR ADMINISTRATIVE AUTHORITY .....	4
ADMINISTRATIVE ASSISTANCE AGREEMENT .....	4
ADMINISTRATIVE SUBCONTRACTS .....	5
ADMINISTRATIVE SELECTION PROCESS .....	5
CONFLICT OF INTEREST .....	6
OUTREACH METHODS AND AFFIRMATIVE MARKETING .....	6
APPLICATION FEES .....	6
APPLICATION REVIEW PROCESS.....	6
INITIAL INSPECTIONS.....	7
PREPARATION OF BID SPECIFICATION/SCOPE OF WORK .....	7
OBTAINING BIDS.....	8
EVALUATING BIDS .....	8
ELIMINATING WORK SCOPE ITEMS .....	8
CONSTRUCTION CONTRACTS .....	8
CONTRACTOR SURETY .....	8
PREPARATION OF LOAN PACKET AND LOAN COMMITMENT .....	8
SUBMISSION OF INELIGIBLE APPLICATION .....	9
PROCEED TO WORK.....	9
MONITORING CONSTRUCTION PROGRESS.....	9
<i>Forgivable and Deferred End loans .....</i>	<i>9</i>
<i>Construction Loans.....</i>	<i>9</i>
CHANGE ORDERS.....	9
<i>Requests for Increase/Decrease in HOME assistance.....</i>	<i>9</i>
<i>Requests for Change in Contractor and/or Improvements.....</i>	<i>10</i>
LOAN CLOSING .....	10
VACANT UNITS AT DEVELOPMENT COMPLETION .....	10
PRESERVATION OF RENTAL ASSISTANCE .....	10
RENT INCREASES.....	10
DEVELOPMENT MONITORING.....	11
<i>After rehabilitation is completed, and before the Effective Period begins.....</i>	<i>11</i>
<i>On an annual basis.....</i>	<i>11</i>
<i>Periodically.....</i>	<i>11</i>
LATE OR MISSING COMPLIANCE DOCUMENTATION .....	11
<i>If the property owner will not cooperate with the monitoring process.....</i>	<i>11</i>
<i>If you find that the affordability requirements are not being met.....</i>	<i>11</i>
ADMINISTRATIVE ALLOWANCE.....	12
PROGRAM MONITORING .....	12
<b>CHAPTER 3 - PROGRAM ELIGIBILITY AND DOCUMENTATION.....</b>	<b>13</b>
ALLOWABLE PER UNIT COSTS .....	13
OWNERSHIP ELIGIBILITY REQUIREMENTS.....	13
OWNERSHIP DOCUMENTATION .....	13
ELIGIBLE PROPERTIES .....	14
ELIGIBLE SOFT COSTS .....	14
ELIGIBLE IMPROVEMENTS/EXPENSES.....	15
INELIGIBLE PROPERTIES.....	15

INELIGIBLE SOFT COSTS .....	15
INELIGIBLE IMPROVEMENTS/EXPENSES .....	16
GOVERNMENTAL ASSISTANCE SUBSIDY LAYERING REVIEW AND EVALUATION .....	16
<b>RENT AND INCOME REQUIREMENTS</b> .....	18
<b>RENT INCREASES</b> .....	19
<b>TENANT SURVEYS</b> .....	19
DETERMINING HOUSEHOLD SIZE .....	19
DETERMINING HOUSEHOLD INCOME .....	20
INCOME VERIFICATION .....	20
<i>Third-Party Verification</i> .....	20
<i>Review of Documents</i> .....	21
ANNUAL INCOME RECERTIFICATION .....	21
INCOME TEMPORARY NON-COMPLIANCE .....	21
HUD EXCEPTION RENTS .....	22
UNIT COMPARABILITY ANALYSIS .....	22
COMPARABLE UNIT METHOD OF COST ALLOCATION .....	24
NON-COMPARABLE UNIT METHOD OF COST ALLOCATION .....	25
DEVELOPMENTS WITH PROJECT-BASED ASSISTANCE .....	26
<i>Rent and Income Limits</i> .....	26
<i>Income Temporary Non-Compliance</i> .....	26
<i>Rent Increases</i> .....	26

#### **CHAPTER 4 - FORGIVABLE LOAN .....27**

BORROWERS MATCHING FUNDS .....	27
EVIDENCE OF TITLE .....	27
SUBORDINATION TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS .....	27
PREPARATION OF LOAN PACKET .....	28
CONSTRUCTION DOCUMENTATION .....	28
HUD/RURAL DEVELOPMENT .....	28
UNIT AND TENANT DATA .....	28
EQUAL OPPORTUNITY .....	29
ENVIRONMENTAL REVIEW .....	29
SUBSIDY LAYERING REVIEW (DEVELOPMENTS RECEIVING OTHER GOVERNMENT ASSISTANCE) .....	29
LEAD-BASED PAINT (BUILT PRIOR TO 1978) .....	29
LOAN COMMITMENT .....	29
PRESERVATION OF RENTAL ASSISTANCE .....	29
DISBURSEMENT OF FUNDS .....	29
COMPLETION DOCUMENTATION .....	29
LOAN CLOSING .....	30
LOAN SERVICING .....	30
PARTIAL RELEASE OF MORTGAGE .....	30
SUBORDINATION OF MORTGAGE .....	31

#### **CHAPTER 5 - DEFERRED LOAN .....32**

EVIDENCE OF TITLE .....	32
SUBORDINATION TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS .....	32
PREPARATION OF LOAN PACKET .....	32
CONSTRUCTION DOCUMENTATION .....	33
HUD/RURAL DEVELOPMENT .....	33
TENANT DATA .....	33
EQUAL OPPORTUNITY .....	33
ENVIRONMENTAL REVIEW .....	33
SUBSIDY LAYERING REVIEW (DEVELOPMENT RECEIVING OTHER GOVERNMENT ASSISTANCE) .....	34
LEAD-BASED PAINT (BUILT PRIOR TO 1978) .....	34
DAVIS-BACON LABOR STANDARDS (12 OR MORE HOME-ASSISTED UNITS) .....	34
LOAN COMMITMENT .....	34
PRESERVATION OF RENTAL ASSISTANCE .....	34

DISBURSEMENT OF FUNDS .....	34
COMPLETION DOCUMENTATION.....	35
LOAN CLOSING .....	35
LOAN SERVICING.....	36
PARTIAL RELEASE OF MORTGAGE .....	36
SUBORDINATION OF MORTGAGE .....	37
<b>CHAPTER 6 – DESIGN AND CONSTRUCTION STANDARDS .....</b>	<b>38</b>
GENERAL .....	38
APPLICABLE CODES, STANDARDS, REGULATIONS .....	38
INTERPRETATION AND IMPLEMENTATION OF APPLICABLE CODES AND STANDARDS.....	39
HOUSING QUALITY STANDARDS (HQS) .....	39
<i>Sanitary facilities:</i> .....	40
<i>Food preparation and refuse disposal.....</i>	40
<i>Space and security .....</i>	41
<i>Thermal environment .....</i>	41
<i>Illumination and electricity .....</i>	41
<i>Structure and materials .....</i>	41
<i>Interior air quality .....</i>	42
<i>Water supply .....</i>	42
<i>Lead-based paint .....</i>	42
Access 42 .....	42
<i>Site and Neighborhood.....</i>	42
<i>Sanitary condition .....</i>	42
<i>Smoke detectors.....</i>	42
ENERGY CONSERVATION CODES AND STANDARDS .....	43
ADDITIONAL MINNESOTA HOUSING DESIGN AND CONSTRUCTION STANDARDS .....	43
<i>Technical Assistance.....</i>	43
<i>Smoke Detectors.....</i>	44
<i>Carbon Monoxide Detectors.....</i>	44
<i>Ground Fault Circuit Interrupters (GFCI) .....</i>	44
<i>Square Footage.....</i>	44
Access 44 .....	44
<i>Municipal Sewer and Water .....</i>	45
<i>Kitchen Range Hood .....</i>	45
<i>Attic ventilation is required.....</i>	45
<b>CHAPTER 7 – LEAD HAZARD EVALUATION AND REDUCTION .....</b>	<b>46</b>
BACKGROUND.....	46
TYPES OF HOUSING COVERED BY THE HUD LEAD-BASED PAINT REGULATION .....	46
TYPES OF HOUSING NOT COVERED BY HUD LEAD-BASED PAINT REGULATION .....	47
OTHER FEDERAL LEAD REGULATIONS .....	47
<i>OSHA’s Lead Regulations (29 CFR 1926.62 and 29 CFR 1910.1025): .....</i>	47
<i>EPA’s Lead Regulations (40 CFR Part 745):.....</i>	47
MINNESOTA DEPARTMENT OF HEALTH (MDH) .....	47
VISUAL ASSESSMENT .....	47
REHABILITATION ASSISTANCE.....	48
CALCULATING REHABILITATION ASSISTANCE.....	48
<i>Per unit rehabilitation hard costs .....</i>	48
<i>Per unit Federal assistance .....</i>	48
MAJOR REHABILITATION REQUIREMENTS OF THE HUD LEAD-BASED PAINT REGULATION .....	49
NOTIFICATION .....	49
EVALUATION AND LEAD HAZARD REDUCTION .....	49
LEAD HAZARD EVALUATION METHODS .....	49
1. <i>Paint Testing .....</i>	49
2. <i>Risk Assessment.....</i>	49
LEAD HAZARD REDUCTION METHODS (24 CFR 35.1325 AND 35.1330).....	50
QUALIFICATIONS TO PERFORM LEAD HAZARD REDUCTION .....	50
SAFE WORK PRACTICES (24 CFR 35.1350) .....	50
RELOCATION AND OCCUPANT PROTECTION (24 CFR 35.1345).....	51
CIRCUMSTANCES WHEN OCCUPANT RELOCATION IS NOT REQUIRED: .....	51

CLEARANCE (24 CFR 35.1340) .....	51
ONGOING MAINTENANCE (24 CFR 35.1355) .....	52
DOCUMENTATION AND RECORDS (24 CFR 35.175) .....	52
REQUIREMENTS FOR FEDERAL ASSISTANCE OF \$5,000 PER UNIT OR LESS: "DO NO HARM" .....	52
<i>Lead Hazard Evaluation</i> .....	52
<i>Lead Hazard Reduction</i> .....	52
<i>Clearance</i> .....	52
REQUIREMENTS FOR FEDERAL ASSISTANCE OF \$5,001 - \$25,000 PER UNIT: "ASSESS AND CONTROL LEAD HAZARDS" .....	53
<i>Lead Hazard Evaluation</i> .....	53
<i>Lead Hazard Reduction</i> .....	53
<i>Clearance</i> .....	53
REQUIREMENTS FOR FEDERAL ASSISTANCE OVER \$25,000: "ASSESS AND ABATE LEAD HAZARDS" .....	53
<i>Lead Hazard Evaluation</i> .....	53
<i>Lead Hazard Reduction</i> .....	53
<i>Safe work practices</i> .....	54
<i>Clearance</i> .....	54

## **CHAPTER 8 – AFFIRMATIVE ACTION, FAIR HOUSING, AND EQUAL ECONOMIC OPPORTUNITY.....55**

MINNESOTA HOUSING FAIR HOUSING AND EQUAL OPPORTUNITY VALUE STATEMENT .....	55
AFFIRMATIVE ACTION.....	55
STATE HUMAN RIGHTS ACT.....	55
AFFIRMATIVE ACTION CERTIFICATION.....	55
CONTRACT COMPLIANCE .....	55
<i>Obtaining and Evaluating Bids, M/WBE Issues</i> .....	55
<i>Minnesota Housing Women and Minority-Owned Business Enterprises Participation Goals</i> .....	56
<i>Affirmatively Marketing to Women and Minority-Owned Business Enterprises, and labor surplus area firms:</i> .....	56
<i>Equal Employment Opportunity</i> .....	57
<i>Section 3</i> .....	58
FAIR HOUSING OPPORTUNITY .....	59
<i>Affirmatively Furthering Fair Housing</i> .....	59
<i>Affirmative Fair Housing Marketing Plans</i> .....	60
<i>Affirmative Marketing and Affirmative Fair Housing Marketing Plan Monitoring</i> .....	60
<i>Fair Housing and Housing for People with Disabilities</i> .....	60
<i>Fair Housing and Section 8 Vouchers</i> .....	61

## **CHAPTER 9 – DAVIS BACON LABOR STANDARDS .....62**

GENERAL .....	62
DESIGNATION OF A LABOR STANDARDS OFFICER (LSO).....	63
REQUEST FOR A WAGE DETERMINATION .....	63
HUD FORM 4010.....	63
CONTRACTOR DEBARMENT REQUEST FORM.....	63
CONTRACT STATUS REPORT .....	64
CONTRACTOR'S/SUBCONTRACTOR'S CERTIFICATION AND WAGE REQUIREMENT REPORT .....	64
PRE-CONSTRUCTION CONFERENCE.....	64
PAYROLL REPORT AND STATEMENT OF COMPLIANCE.....	64
MONITORING OF PAYROLL REPORTS .....	65
NOTICES FOR JOB SITE.....	65
EMPLOYEE INTERVIEW FORM.....	65
REPORT OF WAGE RESTITUTION .....	65
WEEKLY REPORT OF SUBCONTRACTORS ON JOB SITE.....	65
REQUIREMENTS AT DEVELOPMENT COMPLETION .....	65
BORROWER'S LETTER CERTIFYING COMPLIANCE.....	65
FINAL LABOR STANDARDS COMPLIANCE .....	66
REQUIRED SUBMITTALS TO THE LOCAL ADMINISTRATOR .....	66
DISPUTES CONCERNING LABOR STANDARDS AND PAYMENT OF WAGES .....	66
<i>Complaint and Investigation Processing Procedure</i> .....	66

## **CHAPTER 10 – ENVIRONMENTAL REVIEW .....68**

ENVIRONMENTAL REVIEW RESPONSIBILITIES .....	68
LAWS AND REGULATIONS .....	68
LOCAL ADMINISTRATOR RESPONSIBILITIES .....	68
MINNESOTA HOUSING RESPONSIBILITIES .....	68
LIMITATION ON ACTIVITIES .....	68
ENVIRONMENTAL REVIEW RECORD .....	68
PROJECT AGGREGATION .....	69
CATEGORIZING PROJECTS.....	69
BASIC ENVIRONMENTAL REVIEW PROCESS .....	69
ENVIRONMENTAL REVIEW OF CATEGORICALLY EXCLUDED ACTIVITIES .....	71
CONVERSION TO EXEMPT ACTIVITIES .....	71
REHABILITATION MAY BE A CATEGORICALLY EXCLUDED ACTIVITY .....	71
ADDITIONAL MINNESOTA HOUSING ENVIRONMENTAL REVIEW REQUIREMENTS .....	73
<i>Asbestos-containing Materials.....</i>	73
<i>Phase I Environmental Site Assessment .....</i>	73
<b>CHAPTER 11 – UNIFORM RELOCATION ACT.....</b>	<b>74</b>
GENERAL .....	74
GUIDING STATUTES AND REGULATIONS .....	74
RELOCATION REFERENCE MATERIAL AND RESOURCES .....	74
DEFINITION OF DISPLACED PERSON.....	75
DISPLACEMENT TRIGGERS .....	75
WHO IS NOT DISPLACED.....	75
TEMPORARY RELOCATION .....	76
NOTICE REQUIREMENTS.....	76
<i>Served to Existing Households at Loan Application .....</i>	76
<i>Served to Households that Move in After Loan Application.....</i>	76
<i>Served to Households at Loan Commitment.....</i>	77
WHEN AND HOW TO SERVE NOTICES .....	77
AFTER COMPLETION.....	77
RECORD-KEEPING REQUIREMENTS .....	77
PERSONS NOT DISPLACED .....	78
DISPLACED PERSON .....	78
<b>CHAPTER 12 – MANAGEMENT AND LEASING .....</b>	<b>79</b>
LEASE.....	79
PROHIBITED LEASE TERMS.....	79
MANDATORY LEASE TERMS .....	80
TERMINATION OF TENANCY .....	80
MAINTENANCE .....	80
TENANT SELECTION CRITERIA.....	80
DISCLOSURE REQUIREMENTS FOR LEAD-BASED PAINT.....	81
<b>CHAPTER 13 – RURAL DEVELOPMENT.....</b>	<b>82</b>
GENERAL .....	82
PRESERVATION OF RENTAL ASSISTANCE.....	82
DEVELOPMENT MONITORING.....	83





## **Compliance with Federal and State requirements**

Local administrators must comply with all federal requirements of the HOME Program as outlined in the federal regulations, 24 CFR Part 92.

To read this and other federal statutes and rules that are referenced in the 2009 Administrative Procedural Manual, go to <http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/>.

Nothing in this Procedural Manual must be construed as to conflict with, alter, or amend any federal or state regulations applicable to the conduct of the local administrator's business.

To find Minnesota statutes and rules, go to this webpage maintained by the Office of the Revisor of Statutes: <http://www.revisor.leg.state.mn.us/pubs/>.

# Introduction

## Mission Statement

Minnesota Housing finances and advances affordable housing opportunities for low and moderate income Minnesotans to enhance quality of life and foster strong communities.

## Background

The Minnesota Housing (Agency) was established by the 1971 session of the Minnesota Legislature to finance the construction and rehabilitation of housing for families of low and moderate income. In addition to providing financing for Multifamily rental units, single family mortgage loans and home improvement loans and grants, the Agency participates in and administers other programs which assist in increasing or improving affordable housing for Minnesota residents.

# Chapter 1 – Program Description

Minnesota Housing Finance Agency's (Minnesota Housing) goal under the HOME Rental Rehabilitation Program (HOME Program) is to preserve the supply of decent, safe, sanitary, lead-safe affordable housing for lower-income individuals and families.

The Home Program will fund moderate or substantial rehabilitation of low-income rental housing. At a minimum, the property must be in compliance with applicable state and local codes, rehabilitation standards, ordinances, Section 8 Housing Quality Standards (HQS), zoning ordinances and be lead safe. These standards must be met at completion and through the Effective Period of the development. The Effective Period marks the time during which the HOME units must remain in compliance with HOME Program guidelines. The Effective Period is five years for loans less than \$15,000 per HOME-assisted unit and ten years for loans between \$15,000 and \$40,000 per HOME-assisted unit. **The Effective Period begins the day after final disbursement of HOME funds, which occurs after project completion.**

Developments obtaining **\$100,000 or greater** in HOME assistance will receive a **0% deferred loan**:

- Repayment is required upon the earlier of:
  - sale or transfer of the Mortgaged Property
  - payment in full of the permanent senior mortgage loan on the Mortgaged Property
  - maturity date of any permanent senior mortgage loan on the Property, or
  - An occurrence of an Event of Default as outlined in the HOME mortgage.
- Borrowers may obtain financing for 100% of HOME-eligible costs as long as the HOME expenditures do not exceed the established maximum allowance per HOME-assisted unit.
- Borrowers must have existing financing on the property with a mortgage maturity date that extends beyond the Effective Period.
- Properties will be monitored for compliance with affordability and property standards during the Effective Period. Refer to *Chapter 5: Deferred Loan* for full details.

Developments obtaining **less than \$100,000** in HOME assistance will receive a **0% loan that will be forgiven after a successful Effective Period**:

- Repayment is required upon:
  - sale or transfer of the property prior to the expiration of the Effective Period, or
  - An occurrence of an Event of Default as outlined in the HOME mortgage and occurring prior to the expiration of the Effective Period.
- Borrowers must provide a minimum of 25% of the HOME-eligible costs.
- Forgivable loans are end loans; therefore, borrowers will be required to obtain construction financing or provide evidence of funds available during the construction period in the amount of the total development cost (TDC).
- Properties will be monitored for compliance with affordability and property standards during the Effective Period. Refer to *Chapter 4: Forgivable Loan* for full details.

## Chapter 2 – Participation Procedures

### Application for Administrative Authority

In 2006, Minnesota Housing issued a Request for Application (RFA) from local government units and nonprofits, which contained the following:

- Satisfactory evidence that your organization has the capacity to carry out the HOME Program's administrative responsibilities.
- Satisfactory evidence that your organization has the approval of the governing body of the relevant political subdivision (i.e.: County/City Resolution).
- Identification of staff who will be directly involved in various aspects of the HOME Program and a description of their skills and experience.
- Identification of outreach methods and marketing plan for the HOME Program; the marketing plan must not exclude any otherwise eligible applicant from making an application and being considered eligible.
- Indicate whether your organization intends to enter into a subcontract for any portion of the administration of the HOME Program. All subcontractors must be approved by Minnesota Housing **prior to any agreements with the subcontractor.**
- Agencies other than units of local government must submit either a copy of their Certificate of Compliance or a notarized letter indicating that their organization had not more than 40 full-time employees at any time within the previous 12 months.
- Other financial resources your organization has available to provide additional assistance to developments or to assist in payment of HOME Program delivery costs.
- Projected costs your organization will charge the borrower.
- The method your organization will use to select developments, if other than first come-first serve.

Submission of the Application for Administrative Authority does not in itself constitute and evidence a contractual commitment to administer the HOME Program.

### Administrative Assistance Agreement

Together the following documents constitute and evidence a contractual commitment between Minnesota Housing and the local administrator:

- Minnesota Housing approved Application for Administrative Authority.
- Executed Administrative Assistance Agreement.
- This Administrative Procedural Manual (Procedural Manual).
- Supplements, amendments, updates to this Procedural Manual, and Administrative Updates that Minnesota Housing periodically publishes and delivers to local administrators.

Upon Minnesota Housing's approval of your Application for Administrative Authority, you will enter into an Administrative Assistance Agreement with Minnesota Housing. **The Administrative Assistance Agreement is not assignable or transferable.**

By execution of the Administrative Assistance Agreement, you hereby make the following warranties:

- You are legally authorized and constituted to administer the HOME Program in the State of Minnesota.
- You have complied with all terms, conditions and requirements of the administrative contractual documents, unless Minnesota Housing has waived any in writing.

- On request, you will permit during business hours, representatives of Minnesota Housing, the Secretary and Inspector General of the Department of Housing and Urban Development of the United States, and the Comptroller General of the United States, or any of their authorized representatives, to examine or audit any and all records pertaining to the HOME Program.

Minnesota Housing may, at its discretion, terminate the Administrative Assistance Agreement, giving thirty (30) days' written notice before such termination. Reason for termination includes, **but is not limited to:**

- Failure to comply with the requirements set forth in this Procedural Manual, requirements of other Minnesota Housing programs used for the project, or with any other federal requirements of the HOME Program as outlined in the federal regulations, 24CFR 92.
- Failure to show satisfactory evidence of organizational capacity to carry out administrative responsibilities.
- Evidence of fraud, misrepresentation or other misconduct in connection with the HOME Programs' operation. All misconduct cases are referred to the Minnesota Attorney General's Office for appropriate legal action.
- Failure to originate a loan for two (2) consecutive years.

### **Administrative Subcontracts**

You may enter into written agreements with others for assistance with administrative tasks with respect to HOME Program delivery. However, Minnesota Housing must give prior approval to such agreement(s). Regardless of such contracts, you, as the local administrator:

- Assume full responsibility for a subcontractor's performance with respect to the HOME Program. Such performance includes, but is not limited to, adherence to the policies and procedures set forth in this Procedural Manual and all other contractual documents.
- Assume full liability for all warranties and representations made to Minnesota Housing, regardless of who performs the actual processing of application packets.
- Require all subcontractors to attend any HOME Program workshops throughout the term of the subcontract.
- Provide any additional training and technical assistance needed by the subcontractors. Supply the subcontractor with Administrative Updates and any other updates to this Procedural Manual, as communicated by Minnesota Housing.

### **Administrative Selection Process**

You must establish an objective selection process, which will be either first-come, first-served or a ranking system approved in advance by Minnesota Housing, using criteria such as:

- Particular types of improvements.
- Particular neighborhoods and geographic areas.
- Properties with particular income and rent levels.
- Particular sizes of families being served.
- Amount of funds needed to accomplish the required improvements.
- Preservation proposals.
- Property owners past history of affirmatively marketing to minority and women-owned business enterprises (M/WBEs), a diverse workforce, eligible Section 3 participants, and residents.
- Building owner's past history of maintaining compliance on developments previously funded under the HOME Program.

Letters must be issued to an applicant whose application is not selected, stating the reason for rejection.

## **Conflict of Interest**

Any employee, agent, consultant, officer, or elected or appointed official of Minnesota Housing or of any local administrator that received HOME assistance and has responsibilities with respect to the HOME Program, or has access to inside information regarding HOME Program activities, may not obtain a personal or financial interest or benefit from such a contract, subcontract, or agreement, either for themselves or those with whom they have family or business ties, during their tenure, or for one year thereafter. The local administrator shall have established documented practices to make sure there are no conflicts of interest.

Local administrators who wish to obtain HOME assistance to rehabilitate a property in which they have, or will have, an ownership interest must notify Minnesota Housing before application. Minnesota Housing will contract with another approved local administrator to process all stages of the application.

## **Outreach Methods and Affirmative Marketing**

Local administrators are primarily responsible for marketing the HOME Program at the local level. Marketing methods should be such that no potentially eligible applicants are excluded. Access to HOME Program information and materials must not be denied to any person because of race, color, creed, national origin, sex, religion, age, marital status, disability, sexual orientation, receipt of public assistance, or familial status. Refer to *Chapter 8: Affirmative Action, Fair Housing, and Equal Economic Opportunity*.

## **Application Fees**

Local administrators, as independent contractors, may charge an application fee to process HOME Program applications. The following is the fee schedule:

- \$100 per unit, with a suggested minimum of \$500 per project and a maximum of \$3000 per project.

This process was developed to meet these three (3) goals:

- To discourage frivolous applications.
- To compensate local administrators for expenses incurred for applications that do not receive funding.
- To ensure developments are in full compliance with HOME Program regulations.

The total amount of the application fee and the administrator's processing fee may not exceed 10% of the Program loan shown on the List of Improvements/Sworn Construction Statement—HOME Form 9 prepared for the project. If the application is not selected, you may choose, but are not required, to return part or all of the application fee. You must disclose your policy regarding returning fees before collecting the application fee.

## **Application Review Process**

You must establish an application review process in which applicants will be able to go over the specifics of their development to determine eligibility. Items of particular importance include:

- Cooperation of senior lender to subordinate to Minnesota Housing affordability restrictions.
- Current rents and utility allowances.
- Incomes of households residing in the property.
- Other funding sources.
- Impact of the Uniform Relocation Act (URA).
- Proposed scope of work.
- Evidence of clear and marketable title.
- Historic evidence of positive cash flow for the development.
- Vacancy rate of the development within the past 12 months.

## Initial Inspections

The following types of inspections are required prior to preparation of bid specification/scope of work:

- Property inspection to identify deficiencies under applicable state and local codes, rehabilitation standards, ordinances, and Section 8 Housing Quality Standards. Refer to *Chapter 6: Design and Construction Standards*.
- Energy Audit. Refer to *Chapter 6: Design and Construction Standards*.
- If the U.S. Department of Agriculture Rural Development (RD) is the first mortgage holder, the RD construction specialist must conduct an inspection of the property. Refer to *Chapter 13: Rural Development*.
- Developments built prior to 1978, must have a Lead Hazard Evaluation of the property, unless the local administrator presumes the presence of lead-based paint or lead-based paint hazards and standard treatments are employed. Refer to *Chapter 7: Lead-Based Paint*.
- Developments obtaining Minnesota Housing loan(s) in excess of \$300,000 are required to have a Phase I Environmental Site Assessment per ASTM E 1527 including a Lead Hazard Evaluation as referenced above (if built pre 1978) and an asbestos survey with remedies. If the Phase I is not specifically addressed to Minnesota Housing, the owner must obtain a reliance letter from the Assessor in a format acceptable to Minnesota Housing. Refer to *Chapter 10: Environmental Review*.
- Developments obtaining Minnesota Housing loan(s) in excess of \$300,000 may be subject to review by a Minnesota Housing architect.

You should consider including the local building inspector in the initial inspection process. Conducting these inspections early in the development planning and budgeting phase will assure that all local property standards, HQS, local building code, lead-based paint hazards and other deficiencies are identified and included in the preparation of the bid specification/scope of work.

## Preparation of Bid Specification/Scope of Work

After performing initial inspections, determine what items to incorporate in the work scope, to insure the property will comply with applicable state and local codes, rehabilitation standards, ordinances, HQS, zoning ordinances and be lead safe at completion and through the Effective Period. Be sure to include:

- Deficiencies indicated on the Property Inspection Report (HOME Form 3).
- Items listed on the Energy Audit (HOME Form 2) with a simple payback of seven (7) years or less.
- Recommendations by the RD construction specialist (if applicable).
- Recommendations by the Risk Assessor regarding Lead-Based Paint (if applicable).
- Remedies indicated in the Phase I Environmental Site Assessment (if applicable).
- Davis-Bacon Labors Standards (if applicable). Refer to *Chapter 9: Davis-Bacon*.
- Section 3 requirements (if applicable). Refer to *Chapter 8: Affirmative Action, Fair Housing, and Equal Economic Opportunity*.

The following deficiencies must be included in the scope of work (in order of priority): Life safety, Structural/Building Envelope, and Handicapped accessibility as per 24 CFR Part 8, Subpart C, 8.23. Other deficiencies (i.e. appliances, cosmetic enhancements) may be completed upon funding availability.

Many developments may require substantial changes and a scope of work that demands professional assistance in planning. Minnesota Housing will require plans and specifications to be prepared by an architect or licensed engineer if required by state statute or if Minnesota Housing determines that the work scope warrants services of an architect. Engage Minnesota Housing early in the process to facilitate architectural planning.

## **Obtaining Bids**

You should devise bid and proposal forms, or other forms that may help your borrower obtain adequate bids and bids from diverse companies and companies with diverse workforces. Refer to *Chapter 8: Affirmative Action, Fair Housing, and Equal Economic Opportunity*.

It is the policy of Minnesota Housing that Minority and Women-Owned Business Enterprises (M/WBEs) have equal access to business opportunities resulting from Minnesota Housing financed developments, and that the workforces on the developments Minnesota Housing finances are demographically representative of the area in which the developments are located. Refer to *Chapter 8: Affirmative Action, Fair Housing, and Equal Economic Opportunity*.

## **Evaluating Bids**

To ensure reasonable costs, Minnesota Housing requires the borrower to obtain a minimum of two competitive bids from single prime general contractors. The project application must include evidence of a valid Residential Building Contractors License for all bidders.

## **Eliminating Work Scope Items**

Bids may come in higher than expected, prompting the borrower to eliminate work scope items. This is allowable provided the property will comply with applicable state and local codes, rehabilitation standards, ordinances, HQS, zoning ordinances and be lead safe at development completion and through the Effective Period. Minnesota Housing may determine that the eliminated work scope items are necessary and require the borrower to have the work performed at their expense. The local administrator may encourage the borrower to bid non-essential items as alternate bids when developing the scope of work.

## **Construction Contracts**

A construction contract must be executed between the owner and the single prime general contractor. Minnesota Housing requires an American Institute of Architects form of owner-contractor agreement for developments obtaining \$100,000 or greater in HOME assistance.

## **Contractor Surety**

Minnesota Housing requires contractor surety when a borrower will be obtaining a Minnesota Housing construction loan and the deferred loan amount is \$300,000 or greater.

Contractor surety shall be provided by the contractor via AIA performance bond and AIA labor and material payment bond naming Minnesota Housing as lender/obligee. The bond(s) must cover the full amount of the construction contract.

## **Preparation of Loan Packet and Loan Commitment**

Developments obtaining less than \$100,000 in HOME assistance: Refer to *Chapter 4: Forgivable Loan*.

Developments obtaining \$100,000 or greater in HOME assistance: Refer to *Chapter 5: Deferred Loan*.



## **Submission of Ineligible Application**

If you submit an application package on behalf of a borrower whose property does not qualify for the HOME Program or is deemed by Minnesota Housing to be unfeasible, Minnesota Housing reserves the right to take one or more of the following actions:

- If the loan hasn't been approved, Minnesota Housing may refuse to fund it.
- If the loan has been approved, Minnesota Housing may exercise all legal and equitable remedies available to recover from you or the borrower, whichever is appropriate, the funds, together with applicable administrative costs, your fees as local administrator, and all attorney's fees, legal expenses, court costs or other expenses incurred by Minnesota Housing in connection with the loan or its recovery.

## **Proceed to Work**

Upon execution of Loan Commitment, the local administrator shall notify the borrower that they may issue a "Proceed to Work" order to the selected single prime general contractor.

## **Monitoring Construction Progress**

### ***Forgivable and Deferred End loans***

The local administrator, the borrower and/or the management agent shall conduct periodic site inspections during the construction period to ensure work is proceeding according to work scope. The local administrator must certify that lead-safe work practices were observed during site inspection when applicable, per section 24 CFR 35.

### ***Construction Loans***

As local administrator, you must be present at all draw meetings to ensure that Minnesota Housing's interests and HOME Program rules are being met. You must certify that lead-safe work practices were observed during site inspection by noting the file, per section 24 CFR Part 35, when applicable.

## **Change Orders**

### ***Requests for Increase/Decrease in HOME assistance***

Minnesota Housing may, at its discretion, authorize the expenditure of funds in excess of the approved loan amount, not to exceed HOME Program maximums. If the expenditure of funds is less or greater than the approved loan amount, the borrower must submit the following to Minnesota Housing:

- Written explanation of any increase and/or decrease, with the new and/or amended bid(s) or invoice(s)
- Minnesota Housing Change Order form indicating the increase/decrease in loan amount
- Revised List of Improvements/Sworn Construction Statement

The local administrator shall not authorize the commencement of any additional work or the expenditure of any additional funds until receipt of written approval of the increase from Minnesota Housing.

Upon approval, Minnesota Housing will return the executed Change Order form to the local administrator.

The amount of HOME assistance provided to the borrower at final closing will be adjusted according to the approved increase/decrease.

## **Requests for Change in Contractor and/or Improvements**

Minnesota Housing must also approve a change in contractor or eligible improvements, whether or not there is a change in the cost of the rehabilitation.

## **Loan Closing**

Developments obtaining less than \$100,000 in HOME assistance: Refer to *Chapter 4: Forgivable Loan*. Developments obtaining \$100,000 or greater in HOME assistance: Refer to *Chapter 5: Deferred Loan*.

Upon the loan closing for a development, the local administrator makes the following warranties to Minnesota Housing on the date that the loan is closed:

- You have complied with all terms, conditions, and requirements of the contractual documents as they pertain to the submission of application packets and the closing of all HOME Program loans, unless Minnesota Housing has waived them in writing.
- After reasonable inspection, you are satisfied that no improvement covered by the loan is in violation of any applicable zoning laws or regulations.
- You have closed the loan in accordance with closing instructions as outlined in this Procedural Manual.
- You will monitor developments and provide reports to Minnesota Housing as described in this Procedural Manual.

## **Vacant units at Development Completion**

If a unit is vacant at the time of development completion; then when that unit becomes occupied, the local administrator must submit a Tenant Survey (HOME Form 5) for the new tenant household and revised a Rental Completion Report (HOME Form 15) to Minnesota Housing.

## **Preservation of Rental Assistance**

In addition to the Minnesota Housing HOME Program Declaration of Covenants and Restrictions, any property owner of a development receiving Rental Assistance (i.e. Rural Development, HUD 236, Section 8, etc.) will be required to sign a rental-assistance Declaration of Covenants and Restrictions, which contains restrictive covenants preventing the property owner from opting-out of federal rental assistance contracts.

## **Rent Increases**

- For existing tenants:
  - No rent increases are allowed for HOME-assisted units from the application date to one year after development completion.
  - During the Effective Period, rent increases are limited to 5% per year after the first year, and must be within reasonable limits to cover increases in expenses such as real estate taxes or operating expenses
- For lease-up of a previously vacant unit, or at unit turnover:
  - Rents may be increased over 5%
- All increased rents must remain within HOME Program limits.
- All rent increases must receive written approval by the local administrator. Approval can only be granted after the borrower submits a written request for a rent increase accompanied by a schedule of current rents and proposed rents by unit size and bedroom type.
- Tenants must be notified at least one month in advance of the rent increases.
- All rent increases must be in accordance with lease terms and applicable laws.

In the event rents are increased without the approval of the local administrator, the borrower may be required to reduce the rents and make restitution to affected tenants. Tenants may claim economic displacement under the Uniform Relocation Act as a result of unauthorized increases. Refer to *Chapter 11: Uniform Relocation Act*.

## **Development Monitoring**

### ***After rehabilitation is completed, and before the Effective Period begins***

- Minnesota Housing will send you a monitoring schedule for the duration of the Effective Period. The schedule will identify your monitoring responsibilities and deadlines.
- You must obtain Tenant Surveys for each HOME unit from the property owner. The Tenant Survey includes the tenants' certification of income, contract rent, and number of household members. The property owner must supplement the Tenant Surveys with third-party income verification or source documentation.
- You will use the information provided on the Tenant Surveys to complete a Characteristics of Tenant Households (CTH) Report to submit to Minnesota Housing.

### ***On an annual basis***

- You will obtain the Tenant Survey(s) from the property owners to determine whether rent and income standards are still being met.
- You will recertify the information by using one or more of the following practices: visual inspection of the unit, tenant interviews, or viewing borrowers' rent records.
- For any new tenant households in HOME units, the property owner must provide you with third-party income verification or source documentation.
- You will use the Tenant Surveys to complete a CTH Report and sign a certification of the rents and incomes.

### ***Periodically***

You must perform on-site inspections based on the following monitoring schedule:

- 1-4 units/every 3 years during the Effective Period
- 5-25 units/every 2 years during the Effective Period
- 26+ units/yearly during the Effective Period

These inspections include:

- Housing Quality Standard (HQS) inspections of every HOME-assisted unit
- A file review of federally-required documents—Affirmative Marketing Plan, records of URA and Lead Notices, signed Lease Addendums and Data Practices Act notices.

## **Late or Missing Compliance Documentation**

### ***If the property owner will not cooperate with the monitoring process***

Notify the property owner, in writing, that you are referring their non-compliance to Minnesota Housing immediately upon lapse of annual recertification date.

### ***If you find that the affordability requirements are not being met***

Notify the property owner, in writing, of the specific instances of non-compliance. You must mail a copy of the letter or email to Minnesota Housing and you must also give the borrower 30 days to bring the development into compliance. Notify Minnesota Housing of whether the non-compliance was corrected within the required 30 days. If the borrower fails to bring the development into compliance, Minnesota Housing may take further action.

Minnesota Housing will retain records, reported by local administrator on developments, of the due date for each of the following items to be submitted by local administrators:

- Annual household, income and rents compliance certification
- On-site property inspection compliance certification
- Follow-up of non-compliance correction

Minnesota Housing will send notices of delinquent reports to each local administrator. If the delinquent reports (more than one month past due) are not brought up to date, Minnesota Housing may take the following action:

- Withhold payment of administrative fees to the local administrator
- Termination of the Administrative Assistance Agreement
- Refuse local administrators participation in other Minnesota Housing programs
- Exert any additional remedies that it may have in law or equity

### **Administrative Allowance**

During the Effective Period, to help defray the costs of performing the inspections and affordability recertifications, the local administrator is eligible for an administrative allowance of:

- \$50 per HOME-assisted unit for one to four units.
- \$75 per HOME-assisted unit for five or more units.

This annual reimbursement will be provided upon submittal and approval of the CTH report and **Administrator Certification form**.

### **Program Monitoring**

Minnesota Housing will monitor your performance at least annually. During the monitoring visit, Minnesota Housing conducts property inspections of developments and examines **your files** for, including, but not limited to, the following:

- Marketing efforts for the HOME Program.
- Efforts taken to assist borrowers and documentation of the borrowers' actions in affirmatively marketing vacant units, including **the use of the Equal Housing Opportunity logo on all marketing materials**.
- Cost coding of time spent administering the HOME Program, as it relates to the soft costs charged against a development.
- **Tenant/Income verifications for recently closed developments**
- **Unit Mix**
- **Contractor Bids—MBE/WBE documentation**

Upon completion of the monitoring visit, Minnesota Housing will follow up with a written evaluation of your performance, and **instructions for correcting any areas of concern. Failure to address these concerns within the proscribed time period will result in a notice of non-compliance and possible sanctions**

## Chapter 3 - Program Eligibility and Documentation

### Allowable Per Unit Costs

The maximum HOME assistance is \$14,000 per unit, with a minimum project loan request of \$10,000 total. For most projects, the Effective Period for compliance is five years. For qualified developments that preserve existing federally-assisted units for a minimum of 10 years, Minnesota Housing may consider **a maximum of \$40,000** per unit in HOME assistance. Developments receiving between \$15,000 and \$40,000 per unit in HOME assistance have a 10 year Effective Period.

### Ownership Eligibility Requirements

The borrower must provide evidence of a qualifying interest in the property with such interest recorded and appearing in the records of the county. Properties owned by a trust are not eligible to apply for HOME loans. Minimum qualifying interests are:

- 100% fee simple interest, which may be subject to a mortgage
- 100% interest as a purchaser in a contract for deed (forgivable loans only)

Any employee, agent, consultant, officer, or elected or appointed official of Minnesota Housing or of any local administrator that has responsibilities with respect to the HOME Program, or has access to inside information regarding HOME Program activities, may not obtain a personal or financial interest or benefit from such a contract, subcontract, or agreement, either for themselves or those with whom they have family or business ties, during their tenure, or for one year thereafter.

Borrowers must provide evidence of title in the form of a current owners and encumbrance report or commitment for title insurance policy, depending on the amount of HOME assistance received. The title must show that the property is vested in the borrower and is free from any liens or exceptions to title, other than the lien created by the HOME loan and other liens and exceptions to title that Minnesota Housing approves in writing.

### Ownership Documentation

For purposes of determining an organization's ability to borrow from Minnesota Housing, the following must be submitted for review and approval. Please note that Certificates of Good Standing must be filed with Minnesota Secretary of State's Office and dated within 30 days prior to the execution of loan documents.

1. Corporations must provide:
  - A. Certified Articles of Incorporation and amendments, if any.
  - B. Certified Bylaws and amendments, if any.
  - C. Borrowing Resolution containing the following:
    - (1) authority to own and operate rental property;
    - (2) authority to borrow HOME funds and execute Minnesota Housing loan documents;
    - (3) name and title of officer(s) authorized to execute loan documents.

*\*Form of Certification and Borrowing Resolution can be obtained from Minnesota Housing.*

2. General Partnerships must provide:
  - A. Partnership Agreement and amendments, if any.
    - (1) Term of the partnership must be for at least the term of Minnesota Housing's HOME loan.
    - (2) There must be at least two general partners.
    - (3) All general partners are required to sign Minnesota Housing's loan documents.

- B. Borrowing Resolution of corporate general partner(s). Refer to 1.C. (1) through (3), above, for requirements.

**Note**

Borrowing Resolution is not necessary for individual general partner(s).

3. Limited Partnerships must provide:

- A. Certificate of Limited Partnership filed with Minnesota Secretary of State's Office.
  - (1) Term of the partnership must be for at least the term of Minnesota Housing's HOME loan;
- B. Limited Partnership Agreement and amendments, if any.
  - (1) Term of the partnership must be for at least the term of Minnesota Housing's HOME loan;
  - (2) All general partners are required to sign Minnesota Housing's loan documents.
- C. Borrowing Resolution of corporate general partner(s). Refer to 1.C. (1) through (3), above, for requirements.

**Note:**

Borrowing Resolution is not necessary for individual general partner(s).

4. Limited Liability Companies (LLCs) must provide:

- A. Certified Articles of Organization and amendments, if any.
- B. Certified Operating Agreement/Bylaws and amendments, if any.
- C. Certified Member Control Agreement (if applicable) and amendments, if any.
- D. Borrowing Resolution of corporate member(s). Refer to 1.C. (1) through (3), above, for requirements.

*\*Form of Certification and Borrowing Resolution can be obtained from Minnesota Housing.*

5. Municipalities or Local Units of Government (i.e., HRA, EDA) must provide:

- A. Enabling resolution and minutes from the city council establishing the local unit of government.
- B. Certified Bylaws and amendments, if any.
- C. Borrowing Resolution. Refer to 1.C. (1) through (3), above, for requirements.

## **Eligible Properties**

- Properties may contain one or more buildings on a single site that are under common ownership, management, and financing, if the housing units are considered one development.
- Properties may be scattered on more than one site as long as sites are under common ownership, management and financing, and all housing units are being rehabilitated as part of a single undertaking.
- Properties must conform to all applicable zoning ordinances and possess all appropriate use permits.
- Properties must be used primarily for residential purposes (51% or more of the gross floor area of each structure must be residential space).
- Properties must be a permanent structure.
- Properties must meet your selection criteria, which are pre-approved by Minnesota Housing.

## **Eligible Soft Costs**

Eligible development related soft costs are reasonable and necessary costs that the borrower incurs associated with the financing or development, including the following:

- **Local administrator processing fee.** You may impose and charge a processing fee to the borrower for loans that are processed and closed. Payment of the processing fee is the sole responsibility of the Loan Applicant; however, the processing fee amount may be included in the loan as an eligible soft cost. The processing fee is to pay for your expenses as an administrator, including but not limited to: property inspections, preparing plans, energy audits and risk assessments, clearance examinations, work write-ups, processing and

settling financing, and recording fees. You must provide a breakdown of the processing fee by listing your expenses and their estimated costs on the List of Improvements/Sworn Construction Statement (HOME Form 9).

The total amount of the application fee and the processing fee may not exceed 10% of the Program loan.

- Professional services beyond and in addition to those provided by the local administrator, such as architectural fees.
- Temporary relocation costs.
- Developer fee up to 5% of the HOME assistance (for deferred loans only).
- Costs associated with obtaining housing tax credits.

### **Eligible Improvements/Expenses**

Eligible improvements must be permanent, general improvements that:

- Have not been started prior to loan commitment.
- Bring the property into compliance with applicable state and local codes, rehabilitation standards, ordinances, HQS, zoning ordinances and will be lead safe.
- Acquisition costs may be included as an Eligible Improvement/Expense when calculating allowable HOME assistance.

If you are unsure about whether a particular item is eligible, contact your HOME Program Regional Representative.

### **Ineligible Properties**

- Developments under the Emergency Low Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990.
- Developments assisted by Minnesota Housing or other federal programs that have reserves sufficient to capitalize improvements.
- Minnesota Housing assisted or federally assisted developments that pre-paid their mortgage within the previous 5 years.
- Minnesota Housing financed developments that are actively participating in the Redefined Equity Program.
- Public Housing developments.
- Developments previously funded under the HOME Investment Partnership Program that are still within their Effective Period.
- Developments owned by borrowers that previously received HOME assistance and did not successfully maintain compliance with affordability and property standards requirements or otherwise defaulted on the mortgage.
- Other housing developments (e.g., shelters, transitional housing, nursing homes, and assisted living facilities).
- Developments where bankruptcies appear against the property and/or where there are outstanding liens or judgments filed against the property.
- Developments with a history of negative cash flow.

### **Ineligible Soft Costs**

Ineligible soft costs include, but are not limited to the following:

- Application expenses (Although application fees may be charged by the local administrator, they may not be paid with HOME funds. However, local administrator processing fees are offset by the amount of the application fee.)
- Management Agent Fees
- Developer fees in excess of 5% of HOME assistance.
- Monitoring fees.
- Operating and/or replacement reserves.



## **Ineligible Improvements/Expenses**

Ineligible improvements/expenses may be completed at the expense of the borrower. Ineligible improvements include but are not limited to the following:

- New construction.
- Installation of window unit air conditioners, unless previously provided and owned by the development.
- Recreational or luxury improvements.
- Installation of fireplaces or wood burning stoves.
- Sweat equity for the property owner's labor.
- Materials purchased prior to loan commitment.
- Acquisition that is not in conjunction with rehabilitation of the development.
- Non-fixed improvements (equipment and furnishings not considered part of the real estate).
- Materials, fixtures or landscaping of a type or quality exceeding that customarily used in similar neighborhood properties.
- Change orders not approved by Minnesota Housing prior to commencement of work.

## **Governmental Assistance Subsidy Layering Review and Evaluation**

Governmental assistance includes any loan, grant (including a Community Development Block Grant), guarantee, insurance, payment, rebate, subsidy, credit tax benefit, or any other form of direct or indirect assistance from the federal, state, or local government for use in, or in connection with, a specific housing development.

The subsidy layering review evaluates developments using HOME assistance in combination with other governmental assistance to ensure that no more than the necessary amount of HOME Program funds is invested in any one housing development.

Each development that involves the combination of HOME assistance with other governmental assistance must be evaluated, and the development file must contain the required evaluation documentation. Following are the basic review steps:

1. Assess whether other government assistance has been or may be made available.
2. Obtain a formal certification from the applicant(s) concerning the assistance. If no such governmental assistance is to be provided, the applicant should certify to that fact. The applicant also should certify that should other governmental assistance be sought in the future, Minnesota Housing would be notified promptly.
3. The applicant must complete a Sources and Uses of Funds statement reflecting the development budget. The statement should list all sources (both private and public) of funds and the dollar amount for each source; and all uses of funds (including acquisition cost, rehabilitation, financing costs and professional fees) associated with the development.

If the applicant does not give adequate information or does not support the costs as stated, you should request additional information from the appropriate source, or deny HOME assistance.

4. Review the **List of Improvements/Sworn Construction Statement** to determine whether the sources and uses are necessary and reasonable. The sources and uses should include all costs associated with the development regardless of the funding sources.

Make sure costs funded by the HOME Program are eligible activities. Review the development's quality, construction costs, architectural and engineering fees, and consulting fees. Criteria for assessing the "reasonableness" of construction costs are, in part, the comparable bids obtained, costs of comparable developments in the same geographic area,



qualifications of the cost estimators for various budget line items, and comparable costs published by recognized industry cost index services.

5. Determine the reasonableness of the rate of return on the applicant's equity investment by reviewing the applicant's submitted pro forma. Make sure the pro forma specifies the consequences of tax benefits and other assumptions used in calculating the development cash flow.

The pro forma should represent, at a minimum, the term of the HOME Program affordability requirements, but longer if applicable (for example, 15 years for low-income housing tax credit requirements).

HUD provides a table of industry standards to keep in mind when reviewing pro formas. The operating expenses and vacancy rates provided on this table are low. Minnesota Housing's underwriting experience shows that operating expenses are more in the area of 60% or more of gross rents and the vacancy rate should be a minimum of 7%.

6. Evaluate the rate of return. The simplest evaluation is a cash on cash return analysis, calculated by dividing the cash flow by the equity invested, as follows:

**Step 1      Determination of Net Operating Income**

Gross Annual Income
- (Minus)
Vacancy Loss (Rate x Rental Income)
= (Equals) Effective Gross Income (EGI)

EGI
- (Minus)
Operating Expenses
= (Equals) Net Operating Income (NOI)

**Step 2      Compute Cash on Cash Return**

NOI
- (Minus)
Debt Service Cost
= (Equals) Cash Flow

Cash on Cash Return
÷ (Divide)
Cash Flow
= (Equals) Equity

This method of evaluation is adequate for most developments; however, you should use more refined and comprehensive approaches for complicated developments, such as those requiring low-income housing tax credits.

The evaluation is intended to guard against excessive profits that may result from the financing. The generally acceptable level of return is 15% or less; however, this is only part of the evaluation and, as discussed below, a higher return may be allowed.

7. Perform the profit analysis. This analysis takes a look at the annual profit (or cash flow) compared with the total development cost. A profit equal to or less than 10% of the total development cost is acceptable. If the annual profit exceeds that amount, other adjustments to the development would be necessary to reduce it. Calculate profit as follows:

Annual Profit
÷ (Divide)
Annual Cash Flow

= (Equals) Total Development Cost

This evaluation is included on the Cash on Cash Return and Profit Evaluation Form.

8. Analyze the results of the rate of return evaluation and the profit analysis. The profit analysis is the ultimate test of the two evaluations. Although the generally acceptable level for the rate of return is 15% or less, a higher return in that evaluation may be acceptable if the profit analysis shows a profit of 10% or less.

If your evaluation determines that the total amount of HOME and other governmental assistance exceeds the amount necessary to make the development feasible (because costs are unreasonable or the projected rate of return is too high), consider these remedies:

1. Reduce the amount of HOME assistance by reducing the development budget or increasing the borrower's contribution or non-public funding.
2. Make other adjustments: such as lowering the rents, increasing the replacement reserves, or more thoroughly analyzing various expenses (such as vacancy factor, real estate taxes after rehabilitation) that if increased would reduce the profit. You may also reduce the term of the loan thereby increasing the debt service, which would in turn lower cash flow and level of profit.
3. If the applicant refuses to make reasonable adjustments or to limit the rate of return and/or profit, deny HOME assistance.

## Rent and Income Requirements

You must review the rent and income requirements with the property owners. The HOME rent and income tables are available from Minnesota Housing's website at:

[http://www.mnhousing.gov/resources/apply/multifamily/MHFA\\_004714.aspx](http://www.mnhousing.gov/resources/apply/multifamily/MHFA_004714.aspx)

No. of HOME Units		Income Requirements at Initial Certification	Income Requirements After Initial Certification	Rent Requirements
1 – 4		60% area median income (AMI)	80% AMI	Lower of Fair Market Rent (FMR) or 65%* limit
5 +		100% of units are occupied by households with incomes lower than 80% AMI, with these requirements:		
5+	Very low income / Low Rent	At least 20% of the units must be occupied by very low income households, at 50% AMI or less	At least 20% of the units must be occupied by very low income households, at 50% AMI or lower.	At least 20% of the units must pay the lower of FMI, 50% rent limit, or 30% of the family's adjusted income
5+	Low income / High Rent	Up to 10% of the units may be occupied by households above 60% AMI	The remaining 80% of the units may be occupied by households above 60% AMI (up to 80% AMI)	The remainder of the units may pay the lower of FMR or 65%* rent limit

**Note:**

You must have at least 10 HOME-assisted units to qualify for one unit at 80% area median income at initial certification.

\*If you are receiving the benefit of Low Income Rental Classification (LIRC), all LIRC units must comply with LIRC Rent and Income Restrictions.

**Rent Increases**

- For existing tenants:
  - No rent increases are allowed for HOME-assisted units from the application date to one year after development completion.
  - During the Effective Period, rent increases are limited to 5% per year after the first year, and must be within reasonable limits to cover increases in expenses such as real estate taxes or operating expenses
- For lease-up of a previously vacant unit, or at unit turnover:
  - Rents may be increased over 5%
- All increased rents must remain within HOME Program limits.
- All rent increases must receive written approval by the local administrator. Approval can only be granted after the borrower submits a written request for a rent increase accompanied by a schedule of current rents and proposed rents by unit size and bedroom type.
- Tenants must be notified at least one month in advance of the rent increases.
- All rent increases must be in accordance with lease terms and applicable laws.

**In the event rents are increased without the approval of the local administrator, the borrower may be required to reduce the rents and make restitution to affected tenants. Tenants may claim economic displacement under the Uniform Relocation Act as a result of unauthorized increases. Refer to *Chapter 11: Uniform Relocation Act*.**

**Tenant Surveys**

You must ensure that the property owner provides each tenant of a HOME-assisted unit with a Tenant Survey (HOME Form 5). The Tenant Survey is a written statement from the family indicating family size and annual income. These must be completed and signed by all existing tenants and will help determine the number of HOME-eligible units. Upon determining eligibility, submit copies of the tenant surveys for the designated HOME-assisted units to Minnesota Housing as part of the application package. The surveys are confidential and include income and demographic data of each household. Minnesota Housing requires this information for its program assessment database, which is analyzed annually for reporting to the legislature and HUD on the types of households that Minnesota Housing serves. Minnesota Housing does **not** collect data on non-HOME-assisted units to ensure data integrity in reporting.

**New tenants moving into a HOME-assisted unit from application to the end of the Effective Period must complete a Tenant Survey.**

**Determining Household Size**

Use verified household and income data to determine if the household is HOME-eligible. The income limits are adjusted by household size; therefore, the first step in determining eligibility is to determine the size of the household. Some households may include persons who are not counted as family members for the purpose of income limits and whose income, if any, is not considered when calculating annual income.

Do not count the following household members when determining family size for income limit purposes:

- Foster children
- Live in aides and children of live in aides
- Children being pursued for legal custody or adoption who are not currently living in the household

A child who is subject to a shared-custody agreement in which the child resides with the household at least 50% of the time can be counted.

## **Determining Household Income**

Knowing whose income to count is as important as knowing which income to count. Income earned by the following groups of people **is not counted**:

- Earned income of minors (age 17 and under)
- Income of live-in aides

Income earned by the following groups of people **is counted**:

- Temporarily absent family members
- Adult students living away from home (first \$480 of income)

Minnesota Housing uses the annual income definition for the Section 8 program contained in 24CFR §5.609 to determine household income. See that regulation for a more detailed description of income that is included or excluded. In short, count these types of income:

- The full amount—before any payroll deductions—of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
- Net income from the operation of a business or profession.
- Interest, dividends, and other net income of any kind from real or personal property.
- The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.
- Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay.
- Welfare Assistance.
- Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
- All regular pay, special pay and allowances of a member of the Armed Forces.

Now that you know whose income to include and what income is counted, you need to verify these incomes.

## **Income Verification**

You are required to determine income eligibility of tenants prior to submission of an application packet to Minnesota Housing. Evidence of tenant eligibility must be collected for all HOME units in the form of third-party income verification or source documentation.

### ***Third-Party Verification***

Contact a third party (e.g., employer, Social Security Administration, or public assistance agency) to verify information. Although written requests and responses are generally preferred, conversations with a third party are acceptable if documented through a memorandum to the file that notes the contact person, information conveyed and date of call.

To conduct third party verifications, you must obtain a written release from the household that authorizes the third party to release the required information.

This method is helpful because it provides independent verification of information and helps you determine if any changes to current circumstances are anticipated. Some third-parties, however, may be unwilling or unable to provide the information in a timely manner.

Some third-party providers (such as banks) may charge a fee for the information. In such cases, you should attempt to find suitable documentation without the third-party verification – for example, bank statements or a savings passbook. If suitable documentation is not available, costs associated with the third party verifications are considered HOME-eligible expenses. Tenants must **not** be required to pay for verifications.

### ***Review of Documents***

Documents provided by the tenant (e.g. pay stubs, tax returns, etc.) may be appropriate for certain types of income and can be used as an alternative to third party verifications. (Note, however, that if a copy of a tax return is needed, IRS Form 4506 “Request for Copy of Tax Form” must be completed and signed.) Retain the document copies in the development files.

Although easier to obtain than third-party verifications, a review of documents often does not provide needed information. For instance, an applicant’s pay stubs may not provide sufficient information about the average number of hours worked, overtime, tips and bonuses. In this case, a conversation with a third party may be necessary to accurately project annual income.

**For more details, and to obtain sample forms, see HUD’s “Technical Guide for Determining Income and Allowance for the HOME Program,” available at:**

**<http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/1780.cfm>**

### **Annual Income Recertification**

Property owners must annually recertify the incomes of tenants occupying HOME-assisted units. The deadline and effective date of each recertification is one year from the last recertification date. To avoid penalties for late submission, begin the income recertification process 60 to 90 days prior to the deadline.

You will collect new Tenant Surveys (HOME Form #5) from the property owners to determine whether the affordability standards are still being met. This must include a certification from the family that information is complete and accurate, and that source documents will be provided upon request. For existing tenants (those who occupied HOME units during the last recertification), you will recertify using one or more of the following practices: visual inspection of the unit, tenant interviews, or viewing borrower’s rent records. For any new tenant households in a HOME unit, the property owner must provide you with third-party income verification or source documentation.

Annually, you will use the tenant survey data to complete a Characteristics of Tenant Households Report, review eligibility, and certify compliance with HOME Rent and Income requirements.

### **Income Temporary Non-Compliance**

A tenant’s income is likely to change over time. If these changes occur during the Effective Period, the borrower must take certain steps to maintain compliance with affordability requirements.

- The development must maintain the correct number of HOME-assisted units
- Rents must be adjusted for tenants whose incomes rise above 80% of the area median income

The borrower should take the following steps to maintain the correct number of HOME-assisted High Rent (income is between 50% and 80% AMI) and Low Rent units:

- If the income of a tenant occupying a Low HOME Rent unit increases above 50 percent of the area median income, but does not exceed 80 percent of AMI, that unit becomes a High HOME Rent unit. To replace the Low HOME Rent unit, the borrower must rent the next available unit (for “floating” unit projects) or HOME-assisted unit (for “fixed” unit projects) to a tenant at or below 50 percent AMI. Subject to the terms of the lease, the rent of the initial tenant whose income has increased may be increased to the High HOME rent for the unit. This process should not increase the number of assisted units.
- If the income of a tenant occupying a HOME-assisted unit increases above 80% AMI, the unit this tenant occupies is still considered to be a HOME-assisted unit, but the tenant must pay 30% of their adjusted gross income for rent and utilities. Exceptions:
  - (1) This does not include tenants of HOME-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42). Those tenants must pay rent governed by Section 42;
  - (2) Rent for a “floating” unit development is not required to exceed the market rent for comparable, unassisted units in the neighborhood. There is no rent cap for a “fixed” unit development;
  - (3) In a floating unit development, the next available unit of comparable size or larger must be rented to a HOME-eligible household. The unit occupied by the over-income tenant is then no longer considered HOME-assisted.
  - (4) Adjusted rents cannot violate the terms of the lease.

## HUD Exception Rents

Exception rents are not allowable when they are above the published HOME rent limits.

## Unit Comparability Analysis

If the property has two or more units and not all units will be HOME-assisted, the property owner or local administrator must use the Cost-Allocation process to calculate the amount of HOME funds the project can receive. Then, use the following methods to do a unit comparability analysis on both eligible and non-eligible units. (These methods are also available on a separate Unit Comparability and Cost Allocation Worksheet):

**Step 1.** First, determine the number of units eligible based on income of tenants.

**Step 2.** Organize data within the table by the number of bedrooms in each unit. For example, list all one-bedroom units first, followed by two-bedroom units, etc.

Apt. number or other unit identifier	Number of Bedrooms	Unit Square Footage	Are Amenities Comparable? (Y/N)

**Step 3.** Determine if amenities among units with the same number of bedrooms are comparable. When determining amenity comparability, exclude from the consideration amenities that are paid for by the tenant to the owner as an addition to rental of the living unit itself; for example, a garage if it is optional. If the amenities are comparable, go to step 4. If the amenities are not comparable, go to step 6.

**Step 4.** Determine the square footage area of each unit. If the largest unit is no more than the greater of 50 square feet, or 5% more than the smallest unit, the units are considered to be comparable in terms of area. For example, if the largest one-bedroom unit has 800 square feet and the smallest 700 square feet, the larger unit is 14.3% larger than the smallest and more than 50 square feet larger, so the units are not comparable in area. If the smallest unit is 700 square feet and the largest is 750 square feet, the largest is 7.1% larger but no more than 50 feet larger than the smallest unit, so the units are comparable in area.

Repeat this comparison for other units with the same number of bedrooms. If all units with the same number of bedrooms are comparable in area, go to step 5. If they are not comparable in area, go to step 6.

**Step 5.** You have determined that all units with the same number of bedrooms are comparable in terms of area, and amenities.

**(a) Designation of HOME-assisted Units and Cost Allocation.** The owner may select to have the HOME units be either fixed or floating. If floating, HOME tenants may float up to larger units, but they may not float down to smaller units. (REMINDER: In order to use the floating method, the HOME assisted units must be comparable to the non-HOME assisted units.) If fixed, the designated units must be occupied by tenants who meet the income and rent limitations of the HOME Program for the compliance period.

In a mixed-income development (that is, not all units meet the affordability requirements), you must determine whether the HOME-assisted units are “fixed” or “floating”. You must carefully consider these options and the effects of each.

Fixed Units:

The HOME-assisted units remain the same through the Effective Period. Only the HOME-assisted units must be maintained to applicable state and local codes, rehabilitation standards, ordinances, HQS, zoning ordinances and be lead safe at completion and through the Effective Period.

Floating Units:

The HOME-assisted units may change during the Effective Period so long as the total number of HOME-assisted units, in the development, remains the same and the substituted units are comparable in size, features, and number of bedrooms to the originally designated units. All units in the development must be maintained to applicable state and local codes, rehabilitation standards, ordinances, HQS, zoning ordinances and be lead safe at completion and through the Effective Period.

**(b) Determine which units are occupied by income-eligible tenants.** HOME may only pay a share of HOME-eligible costs that is proportionate to the number of units that are occupied by HOME income-eligible tenants and designated as “HOME units.” Determine the per unit HOME costs by the “Comparable Unit Method.”

**Step 6.** You have determined that the units are not comparable. The HOME assisted units must be fixed, not floating. Determine the per unit HOME costs by the “Non Comparable Unit Method.”



## Comparable Unit Method of Cost Allocation

1. Determine the HOME-eligible costs of the project	\$
2. Determine the percentage of units that will be designated "HOME units"	%
3. Multiply lines 1 and 2	\$
4. Number of designated "HOME units"	
5. Multiply Line 4 by \$14,000 per unit limit	\$
6. Maximum HOME assistance. Take the lesser of Lines 3 and 5	\$
7. Gap financing required. Subtract line 6 from line 1.	\$

### Instructions for Comparable Unit Method worksheet

1. Refer to the lists of Eligible and Ineligible costs in Chapter 3 of this Administrative Procedural Manual. These costs may be less than the total development cost.
2. Use Tenant Surveys to calculate the incomes of your tenant households and determine what percent of your units are income-eligible, meet HOME rent limitations, and will be designated as "HOME units."
3. Multiply lines 1 and 2.
4. Total number of designated HOME units determined by tenant household incomes and compliance with HOME rent limitations.
5. \$14,000 is the maximum per unit costs allowed by the HOME Rental Rehab Program, except in special circumstances.
6. The lesser of lines 3 and 5 will give you the amount of HOME eligible costs that may be paid with HOME funds.
7. Subtract line 6 from line 1 to determine the amount of gap financing required.

### Comparable Unit Method Example A

1. Determine the HOME-eligible costs of the project	\$320,000
2. Determine the percentage of units that will be designated "HOME units"	80%
3. Multiply lines 1 and 2	\$256,000
4. Number of designated "HOME units"	20
5. Multiply Line 4 by \$14,000 per unit limit	\$280,000
6. Maximum HOME assistance. Take the lesser of Lines 3 and 5	\$256,000

In Example A, there are 25 units and 20 of them are HOME eligible based on tenant household income and rent. Based on HOME eligible costs and the percentage of units that are HOME eligible, the project could apply for \$256,000. Because this is lower than the \$14,000 per unit limit, the project may be awarded the full \$256,000.

Please note that in order to use the Comparable Unit Method, the HOME-assisted units must be spread evenly by bedroom type. The 25 units in our example are distributed as follows: 13 efficiency units; 12 one-bedroom units. In this case, 13 efficiency units times 80% (portion of HOME eligible costs that will be covered by HOME funds) equals 10.4. At least 10 efficiency units need to be HOME eligible by tenant household income and rent.

12 one-bedroom units times 80% equals 9.6. At least 10 one-bedroom units need to be HOME eligible by tenant household income and rent.



### Comparable Unit Method Example B

1. Determine the HOME-eligible costs of the project	\$400,000
2. Determine the percentage of units that will be designated "HOME units"	80%
3. Multiply lines 1 and 2	\$320,000
4. Number of designated "HOME units"	20
5. Multiply Line 4 by \$14,000 per unit limit	\$280,000
6. Maximum HOME assistance. Take the lesser of Lines 3 and 5	\$280,000

In Example B, there are 25 units and 20 of them are HOME eligible based on tenant household income and rents. Based on HOME eligible costs and the percentage of units that are HOME eligible, the project could apply for \$320,000. However, most projects are limited to a \$14,000 per unit allocation- in which case total funding would equal \$280,000.

In Example B, the 25 units are distributed as follows: 13 efficiency units; 12 one-bedroom units. In this case, because \$280,000, or 70% of the eligible HOME costs, was awarded, only 70% of the units need to be considered HOME assisted. They will be distributed as follows:

13 efficiency units times 70% (portion of HOME eligible costs that will be covered by HOME funds) equals 9.1. At least 9 efficiency units need to be HOME eligible by tenant household income and rent.

12 one-bedroom units times 70% equals 8.4. At least 8 one-bedroom units need to be HOME eligible by tenant household income and rent.

### Non-Comparable Unit Method of Cost Allocation

A Unit I.D.	B Unit Area	C % of Total Unit Area (C/H)	D Unit Rehab Costs	E Unit share of common costs (Common costs x C)	F Total unit costs (Sum D + E)	G HOME Unit? Y or N
Totals	H (Sum of B)					

#### Instructions for Non Comparable Unit Method worksheet

1. Identify each unit in the project.
2. Determine the area of each unit.
3. Determine the total area of living units (cell H), excluding common areas.
4. Determine each unit's share of the value in cell H. (Unit area divided by total of unit areas; i.e., C/H)
5. Determine the HOME-eligible cost of rehabilitation for each unit from bids. Include only the costs of rehabilitation that will occur within the walls of each unit.
6. Determine the HOME-eligible rehabilitation costs of common areas and multiply it by C for each unit. Place the answer in column E.
7. Determine the total cost for each unit by adding across columns D and E and place the answer in column F.
8. Determine which units will be HOME units. HOME units must be fixed.
9. Determine total HOME costs. Add the Column F numbers of HOME-designated units.

10. Determine the average per unit HOME costs by dividing the sum from 9 by the number of HOME units. The answer must be less than \$14,000, or no more than \$40,000 if preserving federally-assisted housing.

## **Developments with Project-Based Assistance**

### ***Rent and Income Limits***

If the HOME-assisted unit receives Federal or State project-based rental subsidy and the unit is occupied by a very low-income (50% AMI) household who pays as a contribution towards rent not more than 30% of its adjusted income, rents may exceed the HOME rent limits.

### ***Income Temporary Non-Compliance***

If the income of a tenant occupying a HOME-assisted unit increases above 50% AMI, the borrower must rent the next available unit (for “floating” unit developments) or HOME-assisted unit (for “fixed” unit developments) to a very low-income (50% area median income) household, or, if the tenant household is at or below 80%AMI, reduce the rent to the HOME rent limit.

### ***Rent Increases***

If the HOME-assisted unit receives Federal or State project-based rental subsidy and the very low-income (50% median income) household pay as a contribution toward rent not more than 30% of the household adjusted income and no displacement occurs as defined by the URA regulations, then the rents may increase within the limits imposed by the rental-assistance provider.

## Chapter 4 - Forgivable Loan

Developments obtaining less than \$100,000 in HOME assistance will receive a 0% loan that will be forgiven after a successful Effective Period. **Repayment is required upon the sale or transfer of the property, or an occurrence of an event of default as outlined in the HOME mortgage, if either occur prior to the successful completion of the Effective Period.**

Borrowers must provide a minimum of 25% of the HOME-eligible costs. Forgivable loans are end loans; therefore, borrowers will be required to obtain construction financing or provide evidence of funds available during the construction period in the amount of the total development cost (TDC). The local administrators must monitor properties for compliance with affordability and property standards during the Effective Period.

### Borrowers Matching Funds

Borrowers must provide a minimum of 25% of the HOME-eligible costs. The local administrator may choose to require a higher borrower's contribution.

Borrowers must provide documentation to demonstrate the source, terms and conditions of their 25% match. This information may be in the form of:

- A commitment letter from a lending institution stating that private funds will be available to the borrower contingent upon obtaining a Minnesota Housing loan commitment.
- A commitment letter from a governmental body providing other public funds such as Community Development Block Grant (CDBG) funds, Minnesota Housing Rental Rehabilitation Loan Program funds, etc.
- For U.S. Rural Development, Section 8 and HUD 236 developments a letter from the local Rural Development office and/or HUD stating the borrower may use reserve funds for the 25% match, if applicable.

### Evidence of Title

Borrowers must provide evidence of title in the form of a current owners and encumbrance report (O & E Report) as to the record owner of the property or a commitment for title insurance, together with such endorsements as Minnesota Housing may require, from a title insurance company acceptable to Minnesota Housing.

### Subordination to Declaration of Covenants, Conditions and Restrictions

Minnesota Housing will require all lenders in a senior position to subordinate their mortgage to the Declaration of Covenants, Conditions and Restrictions- HOME prior to entering into a loan commitment.

It is highly advised that either you or the borrower begin talking to senior lien holders as soon as possible to determine their willingness to execute the subordination to avoid incurred processing costs for applications that will not be successful. If a lender is not able to meet this requirement, Minnesota Housing will be unable to fund the loan.

## Preparation of Loan Packet

The following items are collected by the property owner, with your assistance. These items must be submitted and approved by Minnesota Housing prior to issuance of a loan commitment:

- HOME Rental Rehabilitation Application (HOME Form 1)
- Original photographs of interior and exterior elevations and proposed work scope items
- Current owners & encumbrance report (O & E Report) evidencing title to the property
- Ownership documentation. Refer to Chapter 3: Program Eligibility and Documentation
- Junior lien approval from all senior lien holders
- Subordination consent letter from all senior lien holders
- Statement establishing the source and terms of owner's matching funds
- Property insurance binder or certificate, including building insurance and **\$1,000,000.00 in general liability. Flood insurance is required if property is in a floodplain.**
- Evidence of construction financing
- Applicable utility allowance
- Historical operating reports dating back two years.

## Construction Documentation

- Energy audit performed by an energy auditor
- Property inspection Report(s) and local building standards report, if required in the locality of the development, or if desired by the borrower
- List of Improvements/Sworn Construction Statement including Soft Cost Worksheet (HOME Form 9)
- Final scope of work/bid specifications
- Bids for selected and non-selected single prime general contractors
- License of selected single prime general contractor
- **Evidence from the federal Excluded Parties List System (EPLS) that the single prime general contractor and any subcontractors for amounts greater than \$20,000 are not disbarred from receiving federal funding.**

## HUD/Rural Development

- Audited financial statements for each of the last 2 years
- Rental Assistance Agreement/HAP Contract, if applicable
- Reserves approval, if applicable

## Unit and Tenant Data

- Signed Data Practices form for all HOME-assisted households
- Signed Tenant Survey for all HOME-assisted households
- Signed Lease Addendum for all HOME-assisted households
- Initial Tenant Occupancy Form (listing all units)
- Previous six-months rent roll
- Copies of current lease(s) **for all HOME-assisted households**
- Relocation documentation, if applicable
- A statement of whether the project will have fixed or floating HOME units, the number of HOME units, and if the units are fixed, identification of the HOME units
- A Cost Allocation form with a completed Unit Comparability Analysis and either the Comparable Unit or the Non Comparable Unit calculation of HOME assistance. See pages 3-15 through 3-19 for instructions in preparing these forms.

## **Equal Opportunity**

- Contract Compliance Activity Report
- Signed Contractor Compliance forms for all single prime general contractors and subcontractors providing bids
- Affirmative Fair Housing Marketing Plan (AFHMP) for developments with 5+ units

## **Environmental Review**

- Statutory Checklist with all supporting documentation
- Environmental Assessment Checklist, if applicable

## **Subsidy Layering Review (developments receiving other government assistance)**

- Cash on Cash Return evaluation
- Sources and Uses of Funds statement

## **Lead-Based Paint (built prior to 1978)**

- Lead-based paint Summary Sheet
- Lead-based paint Risk Assessment
- Lead-based paint abatement supervisor and/or worker certifications, if applicable

## **Loan Commitment**

Upon approval of the loan packet, Minnesota Housing will issue a Loan Commitment. You will facilitate execution of the loan commitment with the borrower. Rehabilitation may begin only after the loan commitment is fully executed.

## **Preservation of Rental Assistance**

In addition to the Minnesota Housing HOME Program Declaration of Covenants and Restrictions, any property owner of a development receiving Rental Assistance (i.e. Rural Development, HUD 236, Section 8, etc.) will be required to sign a rental-assistance Declaration of Covenants and Restrictions, which contains restrictive covenants preventing the property owner from opting-out of federal rental assistance contracts.

## **Disbursement of Funds**

No draws will be permitted prior to development completion and Minnesota Housing approval of completion documentation; therefore, borrowers will be required to provide evidence of construction financing in the amount of the total development cost (TDC).

## **Completion Documentation**

At development completion, you are responsible for compiling and reviewing all required completion documentation for submittal to Minnesota Housing for final review and final disbursement of funds. You must submit the following:

- Final List of Improvements/Sworn Construction Statement including Soft Cost Worksheet (HOME Form 9)
- Pictures of completed work
- Invoices for soft costs
- Payoff letters from interim construction lenders
- Lien waivers
- Updated O & E title report
- Contractor Compliance form for all contractors/sub-contractors, if not previously provided
- Certification of completion of energy audit items with a seven year pay back or less.

- Final Property Inspection Report(s) demonstrating compliance with applicable state and local codes, rehabilitation standards, ordinances, HQS and zoning ordinances
- Final Tenant Occupancy form (listing all units)
- Explanation of change in tenancy, if applicable
- Signed Tenant Surveys for any new tenants.
- Signed Data Practices forms for new tenants
- Signed Lease Addendums for new tenants
- Signed "Notice to Prospective Tenant" for new tenants
- Rental Completion Report (reporting HOME-assisted units only)
- Lead-based paint clearance, if applicable
- Updated LBP-1 with lead safe work practices certification, if applicable
- An updated Comparable or Non Comparable Unit calculation of HOME assistance.

## **Loan Closing**

Upon Minnesota Housing approval of completion documentation, Minnesota Housing will issue the following loan documents:

- Loan Repayment Agreement and Mortgage
- Declaration of Covenants, Conditions and Restrictions – HOME
- Declaration of Covenants and Restrictions – HAP/RD (if applicable)

You will facilitate the loan closing with the borrower to have the loan documents executed and notarized. You must have the documents recorded at the Office of the County Recorder or Registrar of Titles, and return the fully executed and recorded loan documents to Minnesota Housing within 90 days.

## **Loan Servicing**

Repayment will be required upon sale, transfer or in the event of default; therefore, loan servicing requests will only be considered for refinance of the existing first mortgage or partial release of mortgage. Loan servicing requests are subject to the terms and conditions of the HOME Program as set forth in this Administrative Procedural Manual, the Owner's Manual, and the loan documents.

General considerations are as follows:

- Requests for loan servicing must be submitted at least 30 days prior to the expected closing date. A \$200 review/processing fee, made payable to Minnesota Housing will be required for each request.
- Minnesota Housing will not consider loan servicing within the first year after development completion. Exceptions to this may be the death of the borrower, or an incorrect legal description encumbering non-improved property.
- The loan-servicing request must financially strengthen the development.

## **Partial Release of Mortgage**

This document discharges a part of the property from the conditions of the mortgage. Minnesota Housing's partial release of mortgage policy is as follows:

Sale of Land or Easement – This action typically involves property that is intended to be included in the legal description, but now the borrower wants to sell a portion or grant an easement on the property. If the sale of part of the property will make the value of the remaining part significantly less than the Minnesota Housing loan, **in Minnesota Housing's sole opinion**, the borrower may be required to repay a portion of the Minnesota Housing loan from the proceeds from the sale.

Accidental Encumbrances – Occasionally the legal description will include neighboring properties. Provided Minnesota Housing never intended to take this other property as security for the loan, **in Minnesota Housing's sole opinion**, Minnesota Housing will release the land.

To process a partial release of mortgage, the following documentation is necessary:

- A written request stating the reason for the release of property.
- The market value of the property prior to the release, and the market value of the property that will remain subject to Minnesota Housing's mortgage (i.e., recent property tax statement, appraisal, or an analysis from a local realtor).
- A list of encumbrances and outstanding balances on the property that will remain subject to Minnesota Housing's mortgage.
- The legal description of the property to be released.
- A plat map, survey or sketch illustrating the property to be released, and the property that will remain subject to Minnesota Housing's mortgage and the location of the rehabilitated structure.
- A copy of the purchase agreement or easement, and the details of the sale including the amount of funds being conveyed.

## **Subordination of Mortgage**

This document subordinates Minnesota Housing's mortgage to a new mortgage. This means that Minnesota Housing's mortgage will be a lower priority against the property.

Minnesota Housing will not subordinate to new financing that provides cash to the borrower unless the proceeds will be used to improve/repair the property. The improvement/repair funds must be held by either the Lender or a title company for disbursement, with any excess funds being applied directly to the principal of the new loan. The new financing cannot be an open-ended line of credit.

To process a subordination of mortgage, the following documentation is necessary:

- A written request for the subordination of mortgage.
- A current appraisal of the estimated value of the property subject to Minnesota Housing's mortgage.
- A letter from the local administrator certifying property compliance with all HOME Program requirements.
- A copy of the Good Faith Settlement Statement.
- A copy of the Commitment for Title Insurance Policy showing all liens and encumbrances and their priority and outstanding balances on the property.
- The outstanding principal balance of the current loan(s), monthly payment(s), interest rate and remaining term.
- A specific commitment letter from the lender, which at a minimum specifies terms of the new mortgage (i.e., principal amount, interest rate, term, payment schedule, etc.).
- A cash-flow analysis of the property, ensuring remaining financial feasibility.
  - The decision of whether or not to partially release the mortgage or subordinate is at the sole discretion of Minnesota Housing. In the event that Minnesota Housing allows the subordination of the Loan Repayment Agreement and Mortgage, the Declaration of Covenants, Conditions and Restrictions-HOME shall remain in a priority position.

## Chapter 5 - Deferred Loan

Developments obtaining \$100,000 or greater in HOME assistance will receive a 0% deferred loan.

**Repayment is required upon the earlier of: the sale or transfer of the Mortgaged Property, the payment in full of the permanent senior mortgage loan on the Mortgaged Property, the maturity date of any permanent senior mortgage loan on the Property, or an occurrence of an Event of Default as outlined in the HOME mortgage.**

Borrowers may obtain financing for 100% of HOME-eligible costs as long as the HOME expenditures do not exceed the established maximum allowance per HOME-assisted unit. Borrowers must have existing financing on the property with a mortgage maturity date that extends beyond the Effective Period. Properties will be monitored for compliance with affordability and property standards during the Effective Period.

### Evidence of Title

Borrowers must provide a Commitment for a Title Insurance Policy insuring Minnesota Housing's interest in the property and the development, and showing that as of the date of closing of the loan, title to the property and the development is vested in the borrower free from any liens or exceptions to title, either junior or prior to the HOME loan, other than the lien created by the HOME loan and other liens and exceptions to title which are consented to by Minnesota Housing in writing.

### Subordination to Declaration of Covenants, Conditions and Restrictions

Minnesota Housing will require all lenders in a senior position to agree to subordinate their mortgage to the Declaration of Covenants, Conditions and Restrictions-HOME prior to entering into a loan commitment.

It is highly advised that either the local administrator or the borrower begin talking to senior lien holders as soon as possible to determine their willingness to execute the subordination to avoid incurred processing costs for applications that will not be successful. If a lender is not able to meet this requirement, Minnesota Housing will be unable to fund the loan.

### Preparation of Loan Packet

The following items are collected by the property owner, with your assistance. These items must be submitted and approved by Minnesota Housing prior to loan commitment:

- HOME Rental Rehabilitation Application (HOME Form 1)
- Comparable or Non-comparable Unit Calculation of HOME Assistance
- Original photographs of interior and exterior elevations and proposed work scope items
- Commitment for a title insurance policy with mechanics lien coverage
- Copy of all senior mortgages on the property
- Ownership documentation. Refer to *Chapter 3: Program Eligibility and Documentation*
- Junior lien approval from all senior lien holders
- Subordination consent letter from all senior lien holders
- Property insurance binder or certificate, including building insurance and **\$1,000,000.00 in general liability. Flood insurance is required if property is in a FEMA-designated floodplain.**
- Evidence of construction financing, if applicable
- Historical operating reports dating back two years.
- Applicable utility allowance



## **Construction Documentation**

- Energy audit performed by an energy auditor
- Property Inspection Report(s) and local building standards report, if required in the locality of the development, or if desired by the borrower
- Bids for selected and non-selected single prime general contractor
- Final scope of work/bid specifications drafted by a licensed architect
- List of Improvements/Sworn Construction Statement including Soft Cost Worksheet (HOME Form 9)
- AIA Architect Agreement between borrower and architect
- Architect Certificate of Insurance
- AIA Construction Contract between borrower and selected single prime general contractor
- License of selected single prime general contractor
- Evidence of contractor's insurance (i.e., general liability, workers compensation, etc.) for developments obtaining a Minnesota Housing construction loan
- Evidence of contractor surety (i.e., payment and performance bonds) for developments obtaining a Minnesota Housing construction loan in the amount of \$300,000 or greater
- Evidence from the federal Excluded Parties List System (EPLS) that the single prime general contractor and any subcontractors for amounts greater than \$20,000 are not disbarred from receiving federal funding.

## **HUD/Rural Development**

- Audited financial statements for each of the last 2 years
- Rental Assistance Agreement/HAP Contract, if applicable
- Reserves approval, if applicable

## **Tenant Data**

- Signed Data Practices form for all HOME-assisted households
- Signed Tenant Survey for all HOME-assisted households
- Signed Lease Addendums for all HOME-assisted households
- Initial Tenant Occupancy Form (listing all units)
- Previous six-months rent roll
- Current lease(s) for all HOME-assisted households
- Relocation Documentation, if applicable

## **Equal Opportunity**

- Contract Compliance Activity Report
- Signed Contractor Compliance form for all single prime general contractors and subcontractors providing bids
- Affirmative Fair Housing Marketing Plan (AFHMP)
- Section 3 documentation, if applicable

## **Environmental Review**

- Statutory Checklist with supporting documentation
- Environmental Assessment Checklist, if applicable
- Phase I Environmental Site Assessment per ASTM E 1527 including lead testing per 24CFR 35.120 (if built pre 1978) and a asbestos survey with remedies, and retain a reliance letter from the assessor (developments obtaining \$300,000 or greater in Minnesota Housing funding)

### **Subsidy Layering Review (development receiving other government assistance)**

- Cash on Cash Return evaluation
- Sources and Uses of Funds statement

### **Lead-Based Paint (built prior to 1978)**

- Lead-based paint Summary Sheet
- Lead-based paint Risk Assessment
- Lead-based paint abatement supervisor and/or worker certifications, if applicable

### **Davis-Bacon Labor Standards (12 or more HOME-assisted units)**

- Evidence of contractor/subcontractor debarment search
- Notice of contract status

### **Loan Commitment**

Upon approval of the loan packet, Minnesota Housing will issue loan documents as follows:

#### End Loan

- Deferred Loan Commitment

#### Construction Loan

- Deferred Loan Commitment
- Building Loan Agreement
- Deferred Loan Repayment Agreement and Combination Mortgage, Security Agreement
- Declaration of Covenants, Conditions and Restrictions – HOME
- Declaration of Covenants and Restrictions – HAP/RD (if applicable)
- Subordination Agreement to Minnesota Housing Declaration of Covenants, Conditions and Restrictions

You will facilitate the loan closing with the borrower and Title Company to have the loan documents executed and notarized. The loan documents must be recorded at the Office of the County Recorder or Registrar of Titles, and returned to Minnesota Housing within 90 days. Rehabilitation may begin only after the loan documents are fully executed.

### **Preservation of Rental Assistance**

In addition to the Minnesota Housing HOME Program Declaration of Covenants and Restrictions, any property owner of a development receiving Rental Assistance (i.e. Rural Development, HUD 236, Section 8, etc.) will be required to sign a rental-assistance Declaration of Covenants and Restrictions, which contains restrictive covenants preventing the property owner from opting-out of federal rental assistance contracts.

### **Disbursement of Funds**

#### End Loan

- No draws will be permitted prior to development completion and Minnesota Housing approval of completion documentation; therefore, borrowers will be required to obtain construction financing or provide evidence of funds available during the construction period in the amount of the total development cost (TDC).

### Construction Loan

- Minnesota Housing will permit one draw per month to be processed through a Title Company. A 10% retainer shall be collected per construction draw until 50% of the work is complete by dollar volume. At that time, the borrower, with Minnesota Housing approval may elect not to withhold any further retainer, resulting in a 5% overall retainer. The retainer will apply to hard costs (i.e., completed work, materials, and equipment.)

### **Completion Documentation**

At development completion, the local administrator is responsible for compiling and reviewing all required completion documentation for submittal to Minnesota Housing for final review and final disbursement of funds. The local administrator must submit the following to Minnesota Housing for review:

- Final List of Improvements/Sworn Construction Statement including Soft Cost Worksheet (HOME Form 9)
- Pictures of completed work
- Updated commitment for title insurance policy
- Payoff letters from interim construction lenders
- Invoices for soft costs
- Contractor Compliance form for all contractors/sub-contractors, if not previously provided
- Certification of completion of energy audit items with seven years pay back or less.
- Final Property Inspection Report(s) demonstrating compliance with applicable state and local codes, rehabilitation standards, ordinances, HQS and zoning ordinances
- Final Tenant Occupancy Form (listing all units)
- Explanation of change in tenancy, if applicable
- Signed Tenant Survey for new tenants
- Signed Data Practices form for new tenants
- Signed Lease Addendum for new tenants
- Signed "Notice to Prospective Tenant" for new tenants
- Rental Completion Report (reporting HOME-assisted units only)
- Section 3 Employment and Training Report, if applicable
- Final Davis-Bacon documentation, if applicable
- Lead-based paint clearance, if applicable
- Updated LBP-1 with lead safe work practices certification, if applicable
- An updated Comparable or Non Comparable unit calculation of HOME assistance.

### **Loan Closing**

Upon Minnesota Housing approval of completion documentation, Minnesota Housing will issue the following loan documents:

#### End Loan

- Deferred Loan Repayment Agreement and Combination Mortgage, Security Agreement
- Declaration of Covenants, Conditions and Restrictions – HOME
- Declaration of Covenants and Restrictions – HAP/RD (if applicable)

#### Construction Loan

- Declaration as to Effective Period
- Amendment to Deferred Loan Repayment Agreement and Combination Mortgage, Security Agreement (if applicable)

The local administrator will facilitate the loan closing with the borrower and Title Company and have the loan documents executed and notarized. The loan documents must be recorded at the Office of the County Recorder or Registrar of Titles, and returned to Minnesota Housing within 90 days.

## **Loan Servicing**

Repayment is required upon the earlier of: the sale or transfer of the Mortgaged Property, the payment in full of any permanent senior mortgage loan on the Mortgaged Property, the maturity date of the permanent senior mortgage loan on the Property, or an occurrence of an Event of Default as outlined in the HOME mortgage. Therefore, loan servicing requests will only be considered for refinance of the existing first mortgage or partial release of mortgage. Loan servicing requests are subject to the terms and conditions of the HOME Program as set forth in this Administrative Procedural Manual, Owners Manual, and the loan documents. General considerations are as follows:

- Requests for loan servicing must be submitted at least 30 days prior to the expected closing date. A \$200 review/processing fee, made payable to Minnesota Housing will be required for each request.
- Minnesota Housing will not consider loan servicing within the first year after development completion. Exceptions to this may be the death of the borrower, or an incorrect legal description, encumbering non-improved property.
- The loan-servicing request must financially strengthen the development.

## **Partial Release of Mortgage**

This document discharges a part of the property from the conditions of the mortgage. Minnesota Housing's partial release of mortgage policy is as follows:

### Sale of Land or Easement

- This action typically involves property that is intended to be included in the legal description, but now the borrower wants to sell a portion or grant an easement on the property. If the sale of part of the property will make the value of the remaining part significantly less than the Minnesota Housing loan, , in Minnesota Housing's sole opinion, the borrower may be required to repay a portion of the Minnesota Housing loan from the proceeds of the sale.

### Accidental Encumbrances

- Occasionally the legal description will include neighboring properties. Provided Minnesota Housing never intended to take this other property as security for the loan, in Minnesota Housing's sole opinion, Minnesota Housing will release the land.

To process a partial release of mortgage, the following documentation is necessary:

- A written request stating the reason for the release of property
- The market value of the property prior to the release, and the market value of the property that will remain subject to Minnesota Housing's mortgage (i.e., recent property tax statement, appraisal, or an analysis from a local realtor)
- A list of encumbrances and outstanding balances on the property that will remain subject to Minnesota Housing's mortgage
- The legal description of the property to be released
- A plat map, survey or sketch illustrating the property to be released, and the property that will remain subject to Minnesota Housing's mortgage and the location of the rehabilitated structure
- A copy of the purchase agreement or easement, and the details of the sale including the amount of funds being conveyed

## **Subordination of Mortgage**

This document subordinates Minnesota Housing's mortgage to a new mortgage, making Minnesota Housing's mortgage a lower priority against the property.

Minnesota Housing will not subordinate to new financing that provides cash to the borrower unless the proceeds will be used to improve/repair the property. The improvement/repair funds must be held by either the Lender or a title company for disbursement, with any excess funds applied directly to the principal of the new loan. The new financing cannot be an open-ended line of credit.

To process a subordination of mortgage, the following documentation is necessary:

- A written request for the subordination of mortgage
- A current appraisal of the estimated value of the property subject to Minnesota Housing's mortgage
- A letter from the local administrator certifying that the property complies with all HOME Program requirements
- A copy of the Good Faith Settlement Statement
- A copy of the Commitment for Title Insurance Policy showing all liens and encumbrances and their priority and outstanding balances on the property
- The outstanding principal balance of the current loan(s), monthly payment(s), interest rate and remaining term
- A specific commitment letter from the lender, which, at a minimum, specifies terms of the new mortgage (i.e., principal amount, interest rate, term, payment schedule, etc.)
- A cash-flow analysis of the property, ensuring remaining financial feasibility

The decision of whether or not to partially release the mortgage or subordinate is at the sole discretion of Minnesota Housing. In the event that Minnesota Housing allows the subordination of the Loan Repayment Agreement and Mortgage, the Declaration of Covenants, Conditions and Restrictions–HOME shall remain in a priority position.

# Chapter 6 – Design and Construction Standards

## General

This section describes minimum design and construction standards required for the HOME Program. Each development must be in compliance with applicable state and local building codes, standards and regulations, including energy efficiency standards. In addition, developments must comply with **Section 8 Housing Quality Standards (HQS) and** Minnesota Housing design and construction requirements described in this section.

If uncertain how these design and construction standards apply to a specific development, contact your region representative.

## Applicable Codes, Standards, Regulations

Minnesota Housing has adopted the following list of codes, standards and regulations as the minimum level of acceptable quality for HOME-assisted developments.

As a condition of receipt of HOME assistance, the borrower accepts all responsibility for verifying and complying with these codes, standards and regulations during construction and during the Effective Period. Failure to comply may result in forfeiture of undisbursed funds, repayment penalties, or both. Borrower is encouraged to seek professional assistance in the application and interpretation of these codes, standards and regulations. Sources of assistance are the local administrator, local building inspector; local architects and engineers; some highly qualified contractors; or your Minnesota Housing region representative.

### Model Codes, Ordinances, General Construction:

1. International Building Code, 2006 Edition
2. International Residential Code for 1- and 2- family dwellings, 2006 Edition
3. Minnesota State Building Code, 2007 Edition
4. Minnesota Statute **326B.805**, regarding licensure of Building and Remodeling Contractors
5. HUD Housing Quality Standards, 24 CFR, 982.401 (only where there are no local housing quality codes or standards)
6. Minnesota Plumbing Code, **Minnesota Rules Chapter 4715**
7. National Electric Code, **Minnesota Statutes Chapter 1315, 2008 Edition**
8. Minnesota Energy Code, **Minnesota Rules Chapter 7670**
9. Any applicable local, city, county, municipal codes, ordinances, zoning regulations, or housing maintenance standards

### Lead-Based Paint and other Lead Hazard Requirements and Procedures:

1. Federal Law 42 U.S.C. 4821 et seq.; "Lead-Based Paint Poisoning Prevention Act"
2. Federal Regulation 24 CFR, Part 35: "Requirements For Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance"
3. **Federal Regulation 24 CFR 982.401(j) applies with respect to Lead-Based Paint regardless of whether local housing quality codes or standards exist**
4. Federal Regulation 40 CFR Part 745 EPA's "Lead; Identification of Dangerous Levels of Lead"
5. Federal Regulation 29 CFR Part 1926 OSHA's "Safety & Health Regulations For Construction"
6. Minnesota Statute **144.9501 to 144.9512**, "Lead Poisoning Prevention Act"
7. Minnesota Rules, Chapter 4761, "Residential Lead Abatement"
8. Minnesota Rule, 7025.0010-7025.0080 **"Abrasive Blasting of Lead Paint from Residential, Child Care, and School Buildings"**

Fair Housing and Handicapped Accessibility Regulations and Statutes:

1. Federal Law, 29 U.S.C. 794: "Section 504 of The Rehabilitation Act of 1973"
2. Federal Regulation 42 U.S.C. 3601, "Fair Housing Act, Title VIII of The Civil Rights Act of 1968"
3. Federal Regulation 24 CFR Part 8: "Non-Discrimination Based on Handicap in Federally Assisted Programs and Activities; Final Rule; June 2, 1998"
4. Covered Multifamily buildings defined in 24 CFR 100.201 must meet the design and construction standards at 24 CFR 100.205
5. Uniform Federal Accessibility Standards (Fed. Std. 795, April 1, 1988)
6. American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped people (ANSI 177.1, 1992)
7. Minnesota Accessibility Code, **Minnesota Rules Chapter 1341**

## **Interpretation and Implementation of Applicable Codes and Standards**

As a condition of application, property inspections are required, at development completion to identify deficiencies and to ensure the property complies with applicable state and local codes, rehabilitation standards, ordinances, HQS, zoning ordinances, and lead based paint standards under 24 CFR Part 35. In addition, property inspections are required through the Effective Period to insure the property maintains continual compliance.

When a local code or ordinance requires building permits, typically the local building inspector will be involved. Encourage the applicants to engage the local building inspector and yourself in a code review or inspection early in the development planning and budgeting phases, to make sure that all code deficiencies are identified, budgeted, and resolved.

Where different codes or standards govern the same condition, conformance must be to the highest or most restrictive standard. For renovation and rehabilitation developments, some model codes allow for pre-existent deficiencies to remain in place. Minnesota Housing relies on the opinion of the local building official to determine which deficiencies may remain or must be corrected. However, on review of the property, Minnesota Housing reserves the right to selectively mandate correction of certain code deficiencies that may be otherwise acceptable to the local building official.

The final disbursement will be withheld until all code deficiencies cited for correction are complete, lead based paint hazards are corrected, and the local building inspector has issued an Occupancy Certificate.

## **Housing Quality Standards (HQS)**

The HQS are found at 24CFR §982.401 and consist of performance requirements and acceptability criteria or HUD approved variations in the acceptability criteria.

The following states performance and acceptability criteria for these key aspects of housing quality:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and security
- Thermal environment
- Illumination and electricity
- Structure and materials
- Interior air quality
- Water supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke detectors



All HOME Program housing must meet the HQS performance requirements both at commencement of assisted occupancy, and throughout the assisted tenancy.

In addition to meeting HQS performance requirements, the housing must meet the acceptability criteria stated in this section, unless variations are approved by HUD.

HUD may approve acceptability criteria variations for the following purposes:

- Variations which apply standards in local housing codes or other codes adopted by the PHA; or
- Variations because of local climatic or geographic conditions.

Acceptability criteria variations may only be approved by HUD if such variations either:

- Meet or exceed the performance requirements; or
- Significantly expand affordable housing opportunities for families assisted under the HOME Program.

HUD will not approve any acceptability criteria variation if HUD believes that such variation is likely to adversely affect the health or safety of participant families, or severely restrict housing choice. Requests for variations must be submitted to Minnesota Housing for initial approval and, if approved, submitted to HUD for its approval.

### ***Sanitary facilities***

- Performance requirements. The dwelling unit must include sanitary facilities located in the unit. The sanitary facilities must be in proper operating condition, and adequate for personal cleanliness and the disposal of human waste. The sanitary facilities must be usable in privacy.
- Acceptability criteria. (i) The bathroom must be located in a separate private room and have a flush toilet in proper operating condition. (ii) The dwelling unit must have a fixed basin in proper operating condition, with a sink trap and hot and cold running water. (iii) The dwelling unit must have a shower or a tub in proper operating condition with hot and cold running water. (iv) The facilities must utilize an approvable public or private disposal system (including a locally approvable septic system).

### ***Food preparation and refuse disposal***

- Performance requirement. (i) The dwelling unit must have suitable space and equipment to store, prepare, and serve foods in a sanitary manner. (ii) There must be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).
- Acceptability criteria. (i) The dwelling unit must have an oven, and a stove or range, and a refrigerator of appropriate size for the family. All of the equipment must be in proper operating condition. The equipment may be supplied by either the owner or the family. A microwave oven may be substituted for a tenant-supplied oven and stove or range. A microwave oven may be substituted for an owner-supplied oven and stove or range if the tenant agrees and microwave ovens are furnished instead of an oven and stove or range to both subsidized and unsubsidized tenants in the building or premises. (ii) The dwelling unit must have a kitchen sink in proper operating condition, with a sink trap and hot and cold running water. The sink must drain into an approvable public or private system. (iii) The dwelling unit must have space for the storage, preparation, and serving of food. (iv) There must be facilities and services for the sanitary disposal of food waste and refuse, including temporary storage facilities where necessary (e.g., garbage cans).



### ***Space and security***

- Performance requirement. The dwelling unit must provide adequate space and security for the family.
- Acceptability criteria. (i) At a minimum, the dwelling unit must have a living room, a kitchen area, and a bathroom. (ii) The dwelling unit must have at least one bedroom or living/sleeping room for each two persons. Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room. (iii) Dwelling unit windows that are accessible from the outside, such as basement, first floor, and fire escape windows, must be lockable (such as window units with sash pins or sash locks, and combination windows with latches). Windows that are nailed shut are acceptable only if these windows are not needed for ventilation or as an alternate exit in case of fire. (iv) The exterior doors of the dwelling unit must be lockable. Exterior doors are doors by which someone can enter or exit the dwelling unit.

### ***Thermal environment***

- Performance requirement. The dwelling unit must have and be capable of maintaining a thermal environment healthy for the human body.
- Acceptability criteria. (i) There must be a safe system for heating the dwelling unit (and a safe cooling system, where present). The system must be in proper operating condition. The system must be able to provide adequate heat (and cooling, if applicable), either directly or indirectly, to each room, in order to assure a healthy living environment appropriate to the climate. (ii) The dwelling unit must not contain non-vented room heaters that burn gas, oil, or kerosene. Electric heaters are acceptable.

### ***Illumination and electricity***

- Performance requirement. Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. The electrical fixtures and wiring must ensure safety from fire.
- Acceptability criteria. (i) There must be at least one window in the living room and in each sleeping room. (ii) The kitchen area and the bathroom must have a permanent ceiling or wall light fixture in proper operating condition. The kitchen area must also have at least one electrical outlet in proper operating condition. (iii) The living room and each bedroom must have at least two electrical outlets in proper operating condition. Permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets.

### ***Structure and materials***

- Performance requirement. The dwelling unit must be structurally sound. The structure must not present any threat to the health and safety of the occupants and must protect the occupants from the environment.
- Acceptability criteria. (i) Ceilings, walls, and floors must not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling, missing parts, or other serious damage. (ii) The roof must be structurally sound and weather tight. (iii) The exterior wall structure and surface must not have any serious defects such as serious leaning, buckling, sagging, large holes, or defects that may result in air infiltration or vermin infestation. (iv) The condition and equipment of interior and exterior stairs, halls, porches, walkways, etc., must not present a danger of tripping and falling. For example, broken or missing steps or loose boards are unacceptable. (v) Elevators must be working and safe.

***Interior air quality***

- Performance requirement. The dwelling unit must be free of pollutants in the air at levels that threaten the health of the occupants.
- Acceptability criteria. (i) The dwelling unit must be free from dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful pollutants. (ii) There must be adequate air circulation in the dwelling unit. (iii) Bathroom areas must have one operable window or other adequate exhaust ventilation. (iv) Any room used for sleeping must have at least one window. If the window is designed to open, the window must work.

***Water supply***

- Performance requirement. The water supply must be free from contamination.
- Acceptability criteria. The dwelling unit must be served by an approvable public or private water supply that is sanitary and free from contamination.

***Lead-based paint***

- Performance requirement. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35.

***Access***

- Performance requirement. The dwelling unit must be able to be used and maintained without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire (such as fire stairs or egress through windows).

***Site and Neighborhood***

- Performance requirement. The site and neighborhood must be reasonably free from disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants.
- Acceptability criteria. The site and neighborhood may not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks or steps; instability; flooding, poor drainage, septic tank back-ups or sewage hazards; mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

***Sanitary condition***

- Performance requirement. The dwelling unit and its equipment must be in sanitary condition.
- Acceptability criteria. The dwelling unit and its equipment must be free of vermin and rodent infestation.

***Smoke detectors***

- Performance requirement. Each dwelling unit must have at least one battery-operated or hard-wired smoke detector, in proper operating condition, on each level of the dwelling unit, including basements but excepting crawl spaces and unfinished attics. Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any hearing-impaired person, - smoke detectors must have an alarm system, designed for hearing-impaired persons as specified in NFPA 74 (or successor standards). For units assisted prior to April 24, 1993, owners who installed battery-operated or hard-wired smoke detectors prior to April 24, 1993 in compliance with HUD's smoke detector requirements, including the regulations published on July 30, 1992, (57 FR 33846), will not

be required subsequently to comply with any additional requirements mandated by NFPA 74 (i.e., the owner would not be required to install a smoke detector in a basement not used for living purposes, nor would the owner be required to change the location of the smoke detectors that have already been installed on the other floors of the unit.

## **Energy Conservation Codes and Standards**

HUD encourages the use of energy efficient products. HUD recently signed a memorandum of understanding (MOU) to promote the use of EPA approved energy efficient products.

An energy auditor shall perform an energy audit on the existing structure prior to finalizing the work scope. For objectivity, the energy auditor shall not be affiliated with any product or service contractor.

The purpose of the energy audit is to identify operation cost-saving opportunities through investment in energy efficiency. It shall examine retrofit of existing systems, as well as replacement strategies. Furthermore, the energy audit educates applicant on the economics of major rehabilitation expense items, such as window and door replacements. All measures considered shall be itemized with estimates of cost, annual energy savings and simple payback period.

In addition, the auditor shall examine the project for compliance with Minnesota Rental Standards. Refer to the Minnesota Housing Rental Standard Compliance form. The auditor shall complete this form and attach it to their energy audit report.

The energy audit must evaluate, at a minimum, these building components:

- Quantities and costs of current energy consumption, by fuel type
- Roof, wall, floor, and foundation insulation
- Heat loss through windows and doors
- Caulking and weather stripping
- Vapor barriers, vapor transmission, vapor venting, moisture condensation
- Hot water heating systems and equipment
- Domestic water systems, fixtures, and metering
- Electrical service and metering
- Interior and exterior common area lighting

Energy conservation costs are HOME-eligible expenses. Where the energy audit identifies excessive energy consumption and alternatives for conservation, Minnesota Housing requires the applicant to take all measures that will provide a payback of seven years or less. Minnesota Housing also allows the applicant to take conservation measures that provide a seven to ten year payback, if reasonable and funds permit. Upon development completion, a post energy audit shall be conducted to verify all measures that provide a seven years or less payback are completed. It is recommended that the same auditor that performed the initial energy audit perform the post audit.

## **Additional Minnesota Housing Design and Construction Standards**

### ***Technical Assistance***

Minnesota Housing will require the borrower to hire an architect and/or professional engineer if required by Minnesota Statutes, or, whenever HOME expenditures are \$100,000 or greater and the scope of work involves any of the following, unless otherwise waived by Minnesota Housing:

- Changes to load-bearing walls
- Conversions
- Reconfigurations
- Adaptive reuse of vacant buildings
- Siding replacement
- Roof replacement (>10,000 square feet of roofing area)

- Installation of an elevator

Other developments may be required to have technical assistance provided by an architect and/or engineer if determined necessary by Minnesota Housing.

Technical assistance includes design and construction administration services. All professional services shall be performed by professionals registered in the State of Minnesota in their respective fields and independent of the borrower and contractor engaged in the development.

Conversions, reconfigurations, and adaptive reuse of an existing building will require approval by a Minnesota Housing architect. Engage Minnesota Housing early in the process to facilitate architectural planning.

Developments obtaining greater than \$300,000 in HOME assistance, or developments containing more than 12 dwelling units and obtaining less than \$100,000 in HOME assistance may require work scope review and approval by a Minnesota Housing architect.

### ***Smoke Detectors***

In dwelling units, one battery operated smoke detector shall be installed in each sleeping room and one hardwired smoke detector shall be installed at a point centrally located in the corridor or area giving access to each separate sleeping area. When a dwelling unit has more than one story and/or a basement, a hardwired smoke detector shall be installed on each story and in the basement. In a dwelling unit where a story or basement is split into two or more levels, the hardwired smoke detector shall be installed on the upper level, except that when the lower level contains a sleeping area, a hardwired smoke detector shall be installed on each level. When sleeping rooms are on an upper level, the hardwired smoke detector shall be placed at the ceiling of the upper level in close proximity to the stairway.

In efficiency dwelling units, one hardwired smoke detector shall be located on the ceiling or wall of the main room. When the sleeping area within an efficiency dwelling unit is on an upper level, the hardwired smoke detector shall be placed at the ceiling of the upper level in close proximity to the stairway.

### ***Carbon Monoxide Detectors***

Effective August 1, 2009, all dwelling units must comply with the carbon monoxide (CO) law Minnesota Statute 299F.50, which requires CO alarms in all single-family and multifamily apartment units. Every single-family dwelling and every multifamily dwelling unit shall be provided with an approved and fully operational **hardwired** carbon monoxide alarm within ten (10) feet of each room lawfully used for sleeping purposes.

### ***Ground Fault Circuit Interrupters (GFCI)***

Ground fault circuit interrupter protection shall be provided as per the National Electric Code at electrical receptacles located in bathroom, kitchen (except refrigerator outlet), and as required in basements and crawl spaces. All exterior receptacles shall also have GFCI protection.

### ***Square Footage***

Properties with dwelling units of less than 650 square feet are strongly discouraged. Contact Minnesota Housing prior to selecting developments with small dwelling units.

### ***Access***

Access to and from each dwelling unit must be without unauthorized use of other private properties or private spaces within the dwelling unit, and the building must provide an alternative means of egress in case of fire, which does not require use of other private property.

Each dwelling unit shall have a continuous and unobstructed means of egress to a public way such as a street, alley, or parcel for public use as defined by building code. Basements in dwelling units and every sleeping room shall have at least one operable window or door approved for emergency escape or rescue which shall open directly into public street, public alley, yard or exit court as defined by building code.

Existing dwelling units that currently have doors and windows for emergency escape that requires the use of other private property as an escape route to a public way must be approved by the Local Building Official, Fire Marshall and Minnesota Housing architect. If this escape route becomes obstructed, even through no fault of the borrower, the dwelling unit will be considered to be in non-compliance and the loan may be required to be repaid.

### ***Municipal Sewer and Water***

If municipal sewer and water is available in an adjacent street, easement, or right-of-way it must be provided to each dwelling unit.

### ***Kitchen Range Hood***

An exhaust hood above the kitchen range is required (ducted type preferred). An existing operable exhaust fan near the range is acceptable.

### ***Attic ventilation is required***

Attic ventilation is required. Minnesota Housing recommends 1 square foot of venting for every 150 square feet of attic space.

## Chapter 7 – Lead Hazard Evaluation and Reduction

This section of the manual provides a detailed description of the lead hazard evaluation and lead hazard reduction requirements for rehabilitation using HOME assistance. This section does not describe requirements for Lead Hazard Evaluation and Reduction if a “lead order” has been issued by an assessing agency or if work is considered “regulated lead work”, as defined by the Minnesota Department of Health. While this description is comprehensive, local administrators and recipients should consult the regulation itself for the exact requirements.

### Background

When ingested, trace amounts of lead in dust, soil, water and lead-based paint can cause irreparable mental and physical disabilities. Pregnant women and children under seven years old are most susceptible to the risks that lead poses.

Years of leaded gasoline use have contaminated soil adjacent to major roadways. Soil next to buildings also can be contaminated when lead-based paint chips and dust remain on the soil after people scrape exterior lead-based paint.

Domestic potable water can become contaminated with lead particles by contact with lead-based solder used in domestic water pipes.

In 1978, the Federal government banned the use of lead in paint. Paint produced before 1950 typically had the highest lead content. It is, therefore, a reasonable assumption that housing constructed prior to 1978 has a high probability of having lead-based paint. Deteriorated lead-based paint (chalking, flaking, peeling, cracked or loose) poses the greatest hazard, as lead particles and dust can be released to the surrounding environment, and thus may be inhaled or eaten by a building’s occupants. Intact lead-based paint on chewable surfaces (window sills, doors, handrails, etc.) also poses a health risk, as young children and infants may ingest lead by chewing on these surfaces.

On September 15, 1999, the U.S. Department of Housing and Urban Development (HUD) issued regulations to protect residents and rehabilitation workers from lead-based paint hazards in housing. The regulation, “Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance,” appears within 24 CFR 35. It contains lead hazard evaluation and reduction requirements for properties receiving HUD funding.

Since the Minnesota Housing HOME Program is federally funded by HUD, the lead-based paint regulation applies to housing developments receiving HOME assistance. However, not all housing developments are covered by the HUD lead-based paint regulation.

### Types of Housing Covered by the HUD Lead-Based Paint Regulation

- Federally owned housing being sold
- Housing receiving a Federal subsidy that is associated with the property, rather than with the occupants (project-based assistance)
- Public housing
- Housing occupied by a family (with a young child) receiving a tenant-based subsidy (such as a voucher or certificate)
- Multifamily housing for which mortgage insurance is being sought
- **Housing receiving Federal assistance for rehabilitation, reducing homelessness, and other special needs.** (e.g. HOME Program)

## **Types of Housing Not Covered by HUD Lead-Based Paint Regulation**

- Housing built since January 1, 1978, when lead paint was banned for residential use
- Housing exclusively for the elderly or people with disabilities, unless a child under age 6 is expected to reside there
- Zero-bedroom dwellings, including efficiency apartments, single room occupancy housing, dormitories, or military barracks
- Property that has been found to be free of lead-based paint by a certified lead-based paint inspector
- Property where all lead-based paint has been removed
- Unoccupied housing that will remain vacant until it is demolished
- Non-residential property
- Any rehabilitation or housing improvement that does not disturb a painted surface

## **Other Federal Lead Regulations**

In addition to the HUD lead regulations there are other Federal regulations that deal with lead-based paint safety. They are:

### ***OSHA's Lead Regulations (29 CFR 1926.62 and 29 CFR 1910.1025):***

These regulations cover Federal worker protection requirements for workers in industry, construction, remodeling, and renovation.

### ***EPA's Lead Regulations (40 CFR Part 745):***

These regulations cover Federal regulations for disposal of lead waste and contractor notification requirements.

## **Minnesota Department of Health (MDH)**

The State of Minnesota also has requirements for lead-based paint hazard surveillance, prevention, evaluation, and reduction. The Minnesota Department of Health (MDH) is in charge of licensing and certification of the lead worker, lead supervisor, lead inspector, lead risk assessor, lead project designer, and lead firm. If an assessing agency has issued a "lead order" or if work is considered "regulated lead work," the requirements for lead hazard evaluation and lead hazard reduction shall comply with Minnesota Statutes **144.9501 to 144.9512.**

## **Visual Assessment**

Every HOME-assisted dwelling unit shall have a Visual Assessment conducted by a person trained to identify deteriorated paint (e.g., HQS inspector, rehab specialist, etc.). The visual assessment is a surface-by-surface inspection for deteriorated paint consisting of a visual search for cracking, scaling, chalking, peeling, or chipping paint. HUD also recommends that the visual assessment should also include a search for dust and debris, including paint chips. Any deteriorated paint shall be documented on the property inspection report. This assessment will typically be performed, or arranged by, the local administrator.

The property owner is responsible for conducting visual assessments of all units at turn-over and annually. The person conducting the visual assessment must be trained in conducting visual assessment. To help owners develop that capacity, HUD offers an online visual assessment course at <http://www.hud.gov/offices/lead/training/index.cfm>. The course takes a short time to complete and provides a certificate documenting successful completion of the course. Visual assessments may be conducted either by the owner and/or their maintenance personnel, or a qualified person under contract with the owner to perform them (such as the local administrator).



## Rehabilitation Assistance

Lead-based paint requirements for rehabilitation developments using HOME assistance fall into three categories, depending on the average per unit amount of Federal rehabilitation assistance:

- Assistance of up to and including \$5,000 per unit
- Assistance of more than \$5,000 per unit up to and including \$25,000 per unit
- Assistance of more than \$25,000 per unit

## Calculating Rehabilitation Assistance

HUD has established a “dual threshold” method of calculating the level of rehabilitation assistance that applies to a rehabilitation development. The level of rehabilitation assistance is determined by taking the lower of:

### ***Per unit rehabilitation hard costs***

- Rehabilitation hard costs are the actual costs, regardless of funding source, associated with the physical development of a unit. It excludes: soft costs, acquisition of property, HOME Program administration, relocation, lead-based paint hazard evaluation costs, and lead-based paint hazard reduction costs.
- If all the units in a multi-unit development are federally assisted, the average rehabilitation is calculated by dividing the total rehab hard costs for the development by the total number of units.
- If there are both Federally assisted units and non-assisted units in a multi-unit development use the following formula:

$$a/c + b/d \quad \text{where:}$$

**a**=Rehabilitation hard costs, as defined above, for all assisted dwelling units (not including common areas and exterior surfaces);

**b**=Rehabilitation hard costs, as defined above, for common areas and exterior surfaces;

**c**=Number of Federally assisted dwelling units in the development; and

**d**=Total number of dwelling units in the development.

-or-

### ***Per unit Federal assistance***

- Includes: All Federal funds provided to the development including funds from program income, typically HOME and CDBG.
- Excludes: Funding such as Low Income Housing Tax Credits and funds provided under the US Department of Energy’s Weatherization Program.
- **The per unit Federal assistance is the total Federal assistance divided by the total number of federally assisted dwelling units in the development.**

**Example:** A 10-unit property is receiving \$140,000 in HOME assistance for rehabilitation. All units (10) are HOME-assisted. The total applicable rehabilitation hard costs for the development are \$300,000. What category of rehabilitation assistance would apply?

The per unit rehabilitation hard cost is: \$300,000/10 units = \$30,000

The per unit Federal assistance is: \$140,000/10 units = \$14,000

**The lesser of the two:** the category into which a rehabilitation job falls is determined by the lesser of the two threshold numbers. In this example per unit Federal assistance (\$14,000) is the lesser number, so the applicable requirements would be those for the \$5,001 - \$25,000 category.



## Major Rehabilitation Requirements of the HUD Lead-Based Paint Regulation

The HUD regulations require that you provide notice to occupants, obtain a risk assessment or presume the presence of lead, focus on lead-safe work practices and repair paint deterioration, conduct interim controls, abatement, or standard treatments, and obtain a clearance examination.

You must meet the requirements in the following areas:

- Notification
- Lead Hazard Evaluation
- Lead Hazard Reduction
- On-going Maintenance
- Record Keeping

### Notification

You must meet three notification requirements:

1. Distribution of Lead Hazard Information Pamphlet (24 CFR 35.130).
2. Notice of Lead Hazard Evaluation or Presumption (24 CFR 35.125).
3. Notice of Lead-Based Paint Hazard Reduction Activity (24 CFR 35.125)

### Evaluation and Lead Hazard Reduction

There are three approaches to implementing lead hazard evaluation and reduction for rehabilitation developments. They are as follows:

- Do no harm
- Assess and control lead-based paint hazards
- Assess and abate lead-based paint hazards

**Note:** **Strategy 2–Identify and Stabilize Deteriorated Paint does not apply to rehabilitation.**

The amount of Federal rehabilitation assistance provided dictates which strategy is to be used and the appropriate method of lead hazard evaluation and lead hazard reduction.

### Lead Hazard Evaluation Methods

The borrower may presume the presence of lead-based paint or lead-based paint hazards. In such cases, neither of the lead evaluation methods described below are required, but standard treatments (see Lead Hazard Reduction Methods, below) must be employed.

#### **Paint Testing**

Paint testing entails testing selected painted surfaces (usually those surfaces with paint deterioration and surfaces that will be disturbed during rehab) to determine if they contain lead-based paint, using methods such as portable XRF (X-ray fluorescence) lead-in-paint analyzer or laboratory analysis of paint chip samples. A certified lead inspector or Risk Assessor must complete paint testing.

#### **Risk Assessment** 24 CFR 35.1320(b)

Risk Assessment involves the process of determining and then reporting the existence, nature, severity, and location of lead-based paint hazards in housing through an on-site investigation and the possible means of correcting any hazards identified. Risk Assessments must be completed by a certified Risk Assessor.

#### **Option:**

The borrower is permitted to conduct a **Lead Hazard Screen** 24 CFR 35.13201(b) and 35.120(c) instead of a risk assessment. The lead hazard screen has more stringent requirements for dust lead and soil lead and is only advisable in units that are in good condition and built after 1970. If the

lead hazard screen indicates that there is no lead contamination, no risk assessment or lead hazard reduction is required. If the lead hazard screen fails, the local administrator must then conduct a full risk assessment.

### **Lead Hazard Reduction Methods (24 CFR 35.1325 and 35.1330)**

Lead hazard reduction methods refer to specific types of treatments to control lead-based paint hazards. As described previously, the level of Federal assistance dictates what method(s) can be used for lead hazard reduction. They are as follows:

- **Paint Stabilization.** *24 CFR 35.1330(b).* This lead hazard reduction method reduces exposure to lead-based paint by repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.
- **Interim Controls.** *24 CFR 35.1330.* Interim controls temporarily reduce exposure to lead-based paint hazards through repairs, painting, maintenance, special cleaning, occupant protection measures, clearance, and education programs. With continued maintenance, interim controls may last for many years.
- **Standard Treatments.** *24 CFR 35.120(a) and 35.1335).* In some cases standard treatments may be conducted in lieu of interim controls on all applicable surfaces, including soil, to control lead-based paint hazards that may be present. All standard treatment methods must follow the same safe work practices and clearance requirements that apply to interim control activities.
- **Abatement.** *24 CFR 35.1325.* Abatement permanently eliminates lead-based paint and/or lead based paint hazards by removing lead-based paint or permanently encapsulating or enclosing the lead-based paint, replacing components with lead-based paint, removing lead-contaminated dust and removing or permanently covering lead-contaminated soil. Encapsulation and enclosure require ongoing maintenance to check their effectiveness.

### **Qualifications to Perform Lead Hazard Reduction**

Workers performing **paint stabilization, standard treatment or interim controls** must be trained in accordance with the OSHA requirements (29 CFR 1926.62) and either:

- Be supervised by an individual certified as a lead-based paint abatement supervisor (40 CFR 745.225), or
- Have successfully completed one of the following courses:
  - A lead-based paint abatement worker course accredited in accordance with 40 CFR 745.225;
  - The Lead-Based Paint Maintenance Training Program-Work Smart, Work Wet, and Work Clean to Work Lead Safe, prepared by the National Environmental Training Association for EPA and HUD;
  - The HUD/NARI Lead Remodelers' Training Program, developed by HUD and the National Association of the Remodeling Industry; or
  - An equivalent course approved by HUD. (HUD has approved courses developed by states. EPA, in consultation with HUD, is developing a Renovation and Remodeling course.)

Workers performing **abatement** must have completed a Lead-Based Paint Abatement Worker course accredited by EPA. A lead-based paint abatement supervisor, certified by the EPA or a state program authorized by the EPA, must supervise these workers.

### **Safe Work Practices (24 CFR 35.1350)**

Regardless of what method of lead hazard reduction is used, safe work practices shall be followed. Safe work practices include occupant protection, worksite preparation, avoidance of prohibited practices and worksite clean up.

**Exception:**

Safe work practices are not required when maintenance or hazard reduction is less than the following "De Minimis Levels":

- 20 square feet on exterior surfaces
- 2 square feet in any one interior room or space
- 10% of the total surface area on an interior or exterior component with small surface area. (E.g.: windowsill, trim, baseboards, etc.)

**Relocation and Occupant Protection (24 CFR 35.1345)**

Appropriate actions must be taken to protect occupants from lead-based paint hazards associated with lead hazard reduction activities. Occupants may not enter the worksite during lead hazard reduction activities. Reentry is permitted only after lead hazard reduction activities are completed and the dwelling has passed a clearance examination.

Occupants of the unit must be temporarily relocated to a suitable unit that is decent, safe, sanitary, and free of lead-based paint hazards during lead hazard reduction activities. Relocation must be done before lead hazard reduction activities begin. Borrower must protect occupants' belongings from lead contamination during lead hazard reduction activities by relocating or covering and sealing them and ensure that the worksite is secured against entry during non-working hours until the unit passes a clearance examination.

**Circumstances when Occupant Relocation is not Required:**

Relocation is not required when:

- Renovation and intervention will not disturb lead-based paint or lead contaminated dust.
- Hazard reduction activities inside will be completed within one period in eight daytime hours, the site will be contained to prevent dust release into other areas, and the work will not create other safety, health or environmental hazards.
- Only exterior rehabilitation is conducted and the windows, doors, ventilation intakes and other openings near the worksite are sealed during hazard reduction activities and cleaned afterward, and a lead-free entry is maintained.
- Hazard reduction activities will be completed within five calendar days; the work area is sealed; at the end of each day, the area within 10 feet of the containment area is cleared of debris; occupants have safe access to sleeping areas, bathroom and kitchen facilities; and treatment does not create other safety, health or environmental hazards. At no time can occupants be permitted into the worksites, unless they are employed in the work, until after the work is complete and clearance, if required, has been achieved.
- HUD has advised that relocation of elderly occupants is not typically required, so long as complete disclosure of the nature of the work is provided and informed consent of the elderly occupant(s) is obtained before commencement of the work. (See "Interpretive Guidance—The HUD Regulation on Controlling Lead-Based Paint Hazards in Housing Receiving Federal Assistance and Federally Owned Housing Being Sold," 6/21/2004 edition.)

**Clearance (24 CFR 35.1340)**

The local administrator must arrange for a clearance examination after completion of rehabilitation. A clearance examination involves a visual assessment and dust testing to determine if the unit is safe for re-occupancy following a lead hazard reduction activity. Clearance following abatement shall be performed by persons certified to perform risk assessments or lead-based paint inspections. Clearance examination of activities other than abatement may be performed by a licensed lead inspector, a risk assessor, or a certified clearance technician. If the test results equal or exceed the designated standards 24 CFR 35.1320(b)(2), the dwelling unit, worksite, or common area fails the clearance examination.

## **Ongoing Maintenance (24 CFR 35.1355)**

All borrowers with properties built before 1978 that have not been verified as lead free by a lead inspection must institute ongoing maintenance of painted surfaces and safe work practices as part of regular building operations. This includes: A visual inspection of lead-based paint annually and at unit turn-over; repair of all unstable paint; and repair of encapsulated or enclosed areas that are damaged.

- Ongoing Maintenance Records—Borrowers must keep ongoing maintenance records and records of relevant building operations for use during reevaluations.
- Borrowers and their maintenance personnel must be trained in ongoing lead based paint maintenance, or must contract with a qualified individual or company to perform ongoing maintenance. Ongoing maintenance of lead-based paint must be conducted only by individuals who have completed a HUD-approved course on lead safe work practices, are licensed lead workers or lead supervisors, or are working under the direction of a licensed lead supervisor.

## **Documentation and records (24 CFR 35.175)**

There are numerous records that local administrators must keep to verify that they conducted the required lead hazard response activities. These records must be kept for at least three years after the Effective Period has elapsed. Local administrators are required to provide a copy of any of the following records to Minnesota Housing and HUD upon request:

- **Lead Hazard Information Pamphlet**— A record of distribution of the pamphlet, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*.
- **Notification of Lead Hazard Evaluation and Reduction**—A copy of each notification of lead hazard evaluation report and lead hazard reduction.
- **Lead Hazard Evaluation Reports**—A copy must be kept of each report of risk assessment, paint testing or lead-based inspection.
- **Clearance and Abatement Reports.**
- **Lead-Based Pain Summary Sheet and Checklist (LBP-1)**

## **Requirements for Federal Assistance of \$5,000 Per Unit or Less: “Do No Harm”**

### ***Lead Hazard Evaluation***

Paint testing must be conducted to identify lead-based paint on painted surfaces that will be disturbed or replaced, **or** local administrators may presume that these surfaces contain lead-based paint. If paint testing is conducted and no lead-based paint is found, no further requirements apply. Provide documentation of the absence of lead-based paint.

### ***Lead Hazard Reduction***

Local administrators must repair all deteriorated paint, and paint that is disturbed during rehabilitation if such paint is found, or presumed, to be lead-based paint.

If lead paint is detected or presumed, lead-safe work practices must be used during rehabilitation unless no more than 2 square feet of paint is disturbed in any interior room, no more than 20 square feet of paint on exterior surfaces is disturbed, and/or 10% of a building component with a small surface area (such as a painted window frame) is disturbed (de minimis level).

### ***Clearance***

Is required only for the worksite. Clearance is not required for areas at or below the de minimis level.

## **Requirements for Federal Assistance of \$5,001 - \$25,000 Per Unit: "Assess and Control Lead Hazards"**

### ***Lead Hazard Evaluation***

There are two requirements, as follows:

- Paint testing must be conducted to identify lead-based paint on painted surfaces that will be disturbed or replaced, or local administrators may presume that these surfaces contain lead-based paint. If paint testing confirms the absence of lead-based paint, include documentation to that effect in the file.
- A risk assessment must be conducted prior to rehabilitation to find lead-based paint hazards throughout assisted units, in common areas that service those units, and on exterior surfaces, or local administrators may presume that lead-based paint hazards exist and use Standard Treatments option.

### ***Lead Hazard Reduction***

If lead-based paint or lead-based paint hazards are detected during the evaluation on interior surfaces in the dwelling units, common areas that service these units, or exterior surfaces, **interim controls** must be implemented to control lead-based paint hazards.

If lead based paint is detected or presumed, **lead-safe work practices** must be used during lead hazard reduction.

### ***Clearance***

Conducted by a certified lead-based paint inspector, risk assessor or clearance/sampling technician is required after lead hazard reduction activities are completed in a unit, common areas serving the unit, and exterior areas where hazard reduction took place. A licensed lead risk assessor must sign Clearance/sampling technician reports.

Options:

- Standard Treatments in lieu of Evaluation
- Lead Hazard Screen versus Risk Assessment (Recommended only on units that are in good condition.)
- Abatement in lieu of interim controls

## **Requirements for Federal Assistance over \$25,000: "Assess and Abate Lead Hazards"**

### ***Lead Hazard Evaluation***

The two requirements for evaluation are as follows:

- Paint testing must be conducted to identify lead-based paint on painted surfaces that will be disturbed or replaced, or local administrators may presume that these surfaces contain lead-based paint. If paint testing confirms the absence of lead-based paint, include documentation to that effect in the file.
- A risk assessment must be conducted prior to rehabilitation to find lead-based paint hazards throughout assisted units, in common areas that service those units, and on exterior surfaces, or local administrators may presume that lead-based paint hazards are present and abate all paint that is disturbed and all presumed lead-based paint hazards, including bare soil.

### ***Lead Hazard Reduction***

If lead-based paint or lead-based paint hazards are detected during the evaluation on interior surfaces in the dwelling units, common areas that service these units, or exterior surfaces, **abatement** must be implemented to control lead-based paint hazards.

**Exception:**

If lead-based paint hazards are identified on exterior surfaces that are not to be disturbed by rehabilitation or cover an area not exceeding de minimis levels, interim controls may be completed instead on these exterior hazards.

***Safe work practices***

Must be used during lead hazard reduction.

***Clearance***

Conducted by a certified lead-based paint inspector or risk assessor is required after lead hazard reduction activities are completed in a unit, common areas serving the unit, and exterior areas where hazard reduction took place. Clearance Option:

- Presume Lead in lieu of Evaluation
- Lead Hazard Screen versus Risk Assessment.

## Chapter 8 – Affirmative Action, Fair Housing, and Equal Economic Opportunity

### Minnesota Housing Fair Housing and Equal Opportunity Value Statement

Minnesota Housing furthers fair housing opportunity in all agency programs and administers its housing programs affirmatively, so that all Minnesotans of similar income levels have equal access to its programs, regardless of race, color, creed, religion, national origin, sex, marital status, age, status with regard to receipt of public assistance, disability, or familial status. The policy applies to staff and to anyone doing business with Minnesota Housing.

### Affirmative Action

Minnesota Housing works affirmatively to ensure that all persons, regardless of race, color, creed, national origin, sex, religion, marital status, age, status with regard to receipt of public assistance, disability, sexual orientation or familial status, will be treated fairly and equally in employment or program participation.

All programs financed or administered through Minnesota Housing will contain equal opportunity/affirmative action requirements in the contracts or procedural manuals, regardless of whether or not federal funding is involved.

### State Human Rights Act

Under the Minnesota Human Rights Act, Section 363A.36, businesses and non-profits that a) have more than 40 full-time employees at any time during the previous 12 months, and b) bid on or make a proposal for a state contract and agreement for goods or services in excess of \$100,000 must have a Certificate of Compliance issued by the Commissioner of the Department of Human Rights. Certificates are issued to businesses that have an Affirmative Action Plan approved by the Commissioner for employment of minorities, women and disabled persons. This does not apply to units of local government.

### Affirmative Action Certification

Local administrators (excluding units of local governments) must submit either a copy of their Certificate of Compliance or a notarized letter indicating that the local administrator did not have more than 40 full-time employees at any time within the previous 12 months.

### Contract Compliance

#### *Obtaining and Evaluating Bids, M/WBE Issues*

It is the policy of Minnesota Housing that minority and women-owned business enterprises (M/WBEs) have equal access to business opportunities resulting from Minnesota Housing-financed developments, and that the workforces on the development projects Minnesota Housing finances are demographically representative of the area in which the developments are located. When reviewing bid information, Minnesota Housing will consider:

- The owner's and general contractor's certification that they comply with laws prohibiting discrimination in employment and that they hire affirmatively.
- The extent to which they solicit bids from M/WBEs; such solicitations must be documented.
- The demographic make-up of the contractor and subcontractor's workforces.



## ***Minnesota Housing Women and Minority-Owned Business Enterprises Participation Goals***

State and federal regulations direct that all affirmative steps be taken to assure that M/WBEs are used when possible. Outreach to minorities and women must be conducted and documented to the satisfaction of Minnesota Housing for contracts in excess of \$50,000.

Minnesota Housing strives to reach the following goals:

- 6% of all contract dollars let to women-owned and –controlled business enterprises.
- 11% of all contract dollars let to minority-owned and –controlled business enterprises in the Seven County Metropolitan Area, including the counties of: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington
- 4% of all contract dollars let to minority-owned and –controlled business enterprises in Southwest Minnesota, including the counties of: Big Stone, Blue Earth, Brown, Chippewa, Cottonwood, Faribault, Jackson, Lac qui Parle, Le Sueur, Lincoln, Lyon, Martin, Murray, Nicollet, Nobles, Pipestone, Redwood, Rock, Sibley, Swift, Waseca, Watonwan, Yellow Medicine
- 4% of all contract dollars let to minority-owned and –controlled business enterprises in Southeast Minnesota, including the counties of: Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha and Winona
- 3% of all contract dollars let to minority-owned and –controlled business enterprises in Central Minnesota, including the counties of: Benton, Chisago, Isanti, Kanabec, Kandiyohi, McLeod, Meeker, Mille Lacs, Pine, Renville, Sherburne, Sibley, Stearns, and Wright
- 6% of all contract dollars let to minority-owned and –controlled business enterprises for the counties of: Becker, Beltrami, Cass, Clay, Clearwater, Crow Wing, Douglas, Grant, Hubbard, Kittson, Mahnomon, Lake of the Woods, Marshall, Morrison, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stevens, Todd, Traverse, Wadena and Wilkin
- 5% of all contract dollars let to minority-owned and –controlled business enterprises in Northeast Minnesota, including the counties of: Aitkin, Carlton, Cook, Itasca, Koochiching, Lake, and Saint Louis

To demonstrate compliance with Minnesota Housing’s affirmative contract compliance requirements, borrowers must identify jobs bid by minority-owned, women-owned, and small or disadvantaged businesses, using the Minnesota Housing Contract Compliance Activity Report. The Minnesota Housing Contract Compliance form is a data collection tool to be included in bidding documents. All contractors and sub-contractors providing bids must complete this form. If not enough contractors (especially minority/women contractors) have been solicited; Minnesota Housing reserves the right to insist work is re-bid affirmatively.

### ***Affirmatively Marketing to Women and Minority-Owned Business Enterprises, and labor surplus area firms:***

#### **Note:**

A labor surplus area is defined by the US Department of Labor as a civil jurisdiction with an unemployment rate at least 20% above the average unemployment rate for all states during the two previous calendar years. That designation can also be petitioned for under exceptional circumstances, demonstrating the area experiences a significant increase in unemployment which is neither temporary nor seasonal and which was not adequately reflected in the data for the two-year reference period. The US Department of Labor keeps an annually updated list of current labor surplus areas.

Federal regulations establish the following affirmative contracting requirements for State, local, and Indian tribal governments, as per 24 CFR 85.36(e):

1. Minnesota Housing and local administrator will take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible.



2. Affirmative steps shall include:
  - a. placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - b. assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - c. dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
  - d. establishing delivery schedules, where the requirement permits, which encourage participation by small and minority, and women's business enterprises;
  - e. using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
  - f. requiring the prime contractor, if subcontractors are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

### ***Equal Employment Opportunity***

Employers with federally assisted construction contracts must not be discriminatory in employment practices. Whenever contracts involving HOME assistance consist of more than \$10,000, an equal opportunity clause, as detailed by Executive Order 11246, must be incorporated into all construction contracts. Sixteen specific equal employment and affirmative action steps are prescribed by Executive Order 11246, to establish good faith efforts. (However, those examples are not the only options available to meet affirmative marketing and action requirements.)

Those sixteen steps consist of the following:

1. maintain a work environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor's employees are assigned;
2. establish and maintain a current list of minority and women recruitment sources, provide written notification to those about employment opportunities and maintain a record of responses;
3. maintain a current file of the names, addresses, and phone numbers of each minority and woman off-the-street or referred applicant;
4. provide immediate written notification to HUD when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has information that the union referral process has impeded the contractor's efforts to meet its obligations;
5. develop on-the-site job training opportunities and/or participate in training programs for the area which expressly include minorities and women;
6. disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations;
7. review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees with managerial and supervisory responsibilities;
8. disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and women news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates to do business;
9. direct its recruitment efforts, both oral and written to minority, women and community organizations, to schools with minority and female students and to minority and women recruitment and training organizations serving the contractor's recruitment area and employment needs;
10. encourage present minority and women employees to recruit other minorities and women and, where reasonable, provide after school, summer, and vacation employment to minority and women youth both on the site and in other areas of a contractors' workforce;
11. validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3;

12. conduct, at least annually, an inventory and evaluation at least of all minority and women personnel for promotional opportunities and encourage those employees to seek or to prepare for, through appropriate training, etc., such opportunities;
13. ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out;
14. ensure that all facilities and company activities are non-segregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes;
15. document and maintain a record of all solicitations of offers for subcontracts from minority and women construction contractors and suppliers, including circulation of solicitations to minority and women contractor associations and other business associations;
16. conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

Minnesota Housing may inspect the site to confirm the percentage of minority and women laborers.

### **Section 3**

**Work done under the HOME Program is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u). These requirements are described in 24 CFR Part 135.**

A tool for fostering local economic development and individual self-sufficiency, Section 3 requires that property owners receiving federal funds and their contractors give opportunities for job training and employment to lower income residents in connection with development in their neighborhoods. To the extent possible, contracts should be let to local businesses or locally owned businesses.

The requirements of Section 3 apply to property owners whenever federal assistance for a project will exceed \$100,000; and to contractors and subcontractors whenever the contract or subcontract exceeds \$100,000.

#### **Section 3 Definitions:**

- Section 3 area:
  - for purposes of training and employment, it is the local unit of government, metropolitan area, and non-metropolitan county
  - for contracting, it is the project's metropolitan area or non-metropolitan county
- Section 3 business:
  - located in the section 3 area
  - or substantially-owned (51%) by Section 3 area residents
- Section 3 resident:
  - any person living in the area who meets the low and very-low income guidelines
  - Youthbuild program participant

#### **Section 3 Goals:**

- 30% of new trainees and hires are Section 3 residents;
- 10% of Section 3 covered contracts for building trades involving maintenance, repairs, or rehabilitation;
- 3% of total dollar amount of all other Section 3 covered contracts is awarded to Section 3 businesses.

Failure to meet these goals does not constitute non-compliance with Section 3, but the burden shifts to the recipients or contractors to show why they could not achieve numerical goals.

Your responsibilities as a local administrator when federal assistance exceeds \$100,000 are the following:

- Make a good faith effort to use area residents in connection with the development; for example, hire area residents for positions that come available, because of HUD assistance.
- Make a good faith effort to award contracts to local business concerns; maintain records and submit reports to the local administrators documenting these actions. Efforts may include letter to community organizations and employment centers; solicitations for bids and copies of affirmative action plans.
- Incorporate into all Section 3 covered contracts the Section 3 clause, found at 24 CFR 135.38.
- Complete the Section 3 information recording on the HOME Program form provided.
- Maintain records documenting the dollar amount of all contracts awarded on the project, the total dollar amount of contracts awarded to Section 3 businesses on the project, and the number of Section 3 businesses receiving contracts, using definitions found on the Contract Compliance Activity Report. This form also reports the number of women and minority employees, vacant positions needing to be filled, and the number of positions filled with low-income area residents.

Contractors/Subcontractors with contracts awards over \$100,000 must do the following:

- Submit a Section 3 Compliance Plan to the local administrator that outlines the efforts to employ and train area residents.
- Maintain records for specific categories for reporting the following:
  - Number of full-time employees hired because of the project
  - Number of Section 3 residents hired full-time
  - Total hours worked by all employees
  - Total hours worked by Section 3 employees and trainees

## **Fair Housing Opportunity**

### ***Affirmatively Furthering Fair Housing***

Local administrators must work with borrowers to affirmatively market vacant housing units. Minnesota Housing requires that borrowers take specific steps in soliciting renters, determining eligibility, and concluding all transactions. These steps include:

- Outreach to protected groups.
- Marketing strategy that reaches protected groups.
- Self-analysis to make sure all steps are non-discriminatory.

To meet federal requirements, the following procedures relating to non-discrimination and equal opportunity apply during the Effective Period, as the term is defined in the "Declaration of Covenants," generally five or ten years after project completion.

- a) The local administrator and borrowers should discuss ways to reach affirmative marketing goals, that is, ways to solicit applications from those least likely to apply; for example, borrowers should make efforts to reach out to people not of the race/ethnicity of the neighborhood's residents and yet from populations present in the area. Such outreach efforts shall involve community organizations, churches, employment centers, fair housing groups, or housing counseling agencies specifically chosen because they provide services to or have as members, persons least likely to apply. Minnesota Housing may identify which racial/ethnic groups in the local population are least likely to apply for the housing.
- b) Advertisement of vacant units must include the equal housing opportunity logo or statement. Any photograph should be representative of all people, that is, they should include minority, non-minority, and disabled persons, or be neutral, in the sense that any person looking at it would not feel excluded as a preferred resident. Media may include newspapers, radio, TV, brochures, leaflets, or simply a sign on a window/bulletin board that

is visible to the larger public (signs only visible to current residents may not qualify as advertisements open to the larger public).

- c) The borrower must maintain records containing all efforts taken to affirmatively market vacant units. Such records may include copies of all advertising used, a list identifying race, ethnicity, and gender of tenants occupying the units before and after rehabilitation, and relocation data for displaced persons.

### ***Affirmative Fair Housing Marketing Plans***

Borrowers must complete an Affirmative Fair Housing Marketing Plan (AFHMP) for properties with five or more units, as an affirmative marketing procedure. This requirement is incorporated in the written agreement between the property owners and Minnesota Housing for developments involving more than five units. The AFHMP will set forth the unit marketing target group and specific actions to be taken to affirmatively market units to those least likely to apply for housing.

### ***Affirmative Marketing and Affirmative Fair Housing Marketing Plan Monitoring***

Minnesota Housing will assess the success of affirmative marketing efforts by comparing actual occupancy data with census data for the city and county of renters from communities of color, people with disabilities, and single female heads of household.

### ***Fair Housing and Housing for People with Disabilities***

Minnesota Housing promotes and abides by all laws and regulations related to accessible housing requirements, from non-discrimination to reasonable accommodations to reasonable modifications to design and construction requirements for covered units.

The federal Fair Housing Act requires that landlords and rental agents make reasonable accommodations in rules, policies, practices, and services to afford a person with a disability equal opportunity to occupy and enjoy full use of a unit, granted there are no prohibitive costs or burdens.

The federal Fair Housing Act requires that persons with disabilities be allowed to make reasonable modifications to the premises at his or her expense, if such modifications are necessary to allow full use of the premises. The landlord may require the renters with a disability to be responsible for reasonable restorations of the interior of the unit to its original conditions, before terminating occupancy. An escrow account can be set up to ensure that funds will be available for that purpose.

Concurrent with non-discriminatory leasing, management, and employment practices, some developments may require certain design provisions and/or construction features to accommodate accessibility and occupancy by mentally or physically disabled tenants.

Where the anticipated costs of rehabilitation for a development consisting of 15 units or more is at least 75% of the development replacement costs (excluding land costs), 5% of the dwelling units (at least one unit) must be accessible and adaptable to persons with physical mobility impairments and 2% of the units (at least one unit) must be accessible to persons with hearing/visual impairments. Those accessible units cannot be the same unit, which requires that a minimum of 2 accessible units be made available in those projects. 24 CFR 8.23(a).

For other rehabilitation developments, 24 CFR Part 8.23(b) stipulates, in part:

- ...alterations to dwelling units in a multifamily housing development (including public housing) shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a development are readily accessible to and usable by individuals with mobility impairments,

no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with handicaps. For purposes of this paragraph, the phrase "to the maximum extent feasible" shall not be interpreted as requiring that a recipient (including a PHA) make a dwelling unit, common area, facility or element thereof accessible, if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.

Accessible units must be distributed/scattered throughout the site for full integration and be made available in a range of unit sizes and amenities for comparable choice. Owners and managers of accessible multifamily housing must promote occupancy of the units by people with disabilities.

Owners and managers must give prior notice to a non-disabled household applying for an accessible unit that priority will be given to a disabled household, should a disabled household request that accessible unit during the term of the lease. If a similar non-accessible unit is available in the same complex at the same rent, the non-disabled household will be asked to move to that other unit. Minnesota Human Rights Act, Section 363A.40.

Applicable laws and regulations are as follows:

1. Federal Law, 29 USC 794: "Section 504 of the Rehabilitation Act of 1973"
2. Federal Regulation, 42 USC 3601, "Fair Housing Act, Title VIII of the Civil Rights Act of 1968"
3. Federal Regulation, 24 CFR Part 8: "Non-Discrimination Based on Handicap in Federally-Assisted Programs and Activities"
4. Covered Multifamily buildings defined in 24 CFR 100.201 must meet the design and construction standards at 24 CFR 100.205
5. Uniform Federal Accessibility Standards (Fed. Std. 795, April 1, 1988)
6. American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People (ANSI 177.1, 1992)
7. Minnesota Accessibility Code, **Minnesota Rules Chapter 1341**
8. Federal Regulations, 24 CFR 100.203 and 100.204, "Reasonable Modifications and Accommodations."
9. Minnesota Human Rights Act, Chapter 363A.

### ***Fair Housing and Section 8 Vouchers***

Property owners cannot refuse to lease HOME-assisted units to a voucher holder under 24 CFR part 982—Section 8 Tenant-Based Assistance: Housing Choice Voucher Program or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program, because of the status of the prospective tenant as a holder of such voucher, or comparable HOME-tenant-based assistance document

## Chapter 9 – Davis Bacon Labor Standards

### General

As a local administrator, it is important to develop a working knowledge of the HUD Labor Standards. Your property owners will likely require your assistance with questions that may arise in regard to labor standards issues and compliance.

All people working on a rental housing development that contains twelve (12) or more HOME-assisted dwelling units and receives HOME assistance alone, or in conjunction with other non-federal funding sources, must be paid an hourly rate not less than the minimum rate specified in the wage decision for each particular development. Borrowers or general contractors must submit weekly payroll reports and other applicable documents to you to verify these payments. The completion and submittal of all Labor Standard Requirements is a condition for the release of HOME assistance.

When combining HOME assistance with other federal sources, follow the Davis-Bacon standards of the HOME Program.

Borrowers agree to abide by and ensure compliance with the federal labor standards laws and regulatory requirements. The three laws that apply are:

- Davis-Bacon Act— Workers must receive not less than the prevailing wages being paid for similar work in the locality. Prevailing wages are computed by the Department of Labor (DOL) and are issued in the form of federal wage decisions for each classification of work.
- Copeland “Anti-kickback” Act—Workers must be paid at least once a week without any deductions or rebates except permissible deductions, which include taxes, deductions the worker authorized, and those required by court processes. The Act also requires that contractors maintain payroll records and submit weekly payrolls and statements of compliance to the contracting agency. (If the contract is over \$100,000)
- Contract Work Hours and Safety Standards Act—Workers must receive overtime compensation at a rate 1 ½ times their regular wage after they have worked 40 hours in one week.

Please refer to the U. S. Department of Housing and Urban Development Office of Labor Relations Desk Guide LR-II for additional information about the laws outlined above. The guide also provides a detailed description of the policies, procedures and responsibilities for the administration and enforcement of labor standards requirements in federally assisted developments. Since labor standards requirements cannot be waived or modified, you should review this material and become thoroughly familiar with its contents. Also available is the publication “Making Davis-Bacon Work, A Contractors Guide to Prevailing Wage Requirements for Federally-Assisted Construction.

The purpose of this section is to assist you in understanding your labor standards obligations, and to ensure that the requirements of the laws are met in the most efficient and accurate manner possible. Please contact Minnesota Housing’s Labor Standards Officer for the most up to date information.

The information introduced in this section is not intended as a full or completed description of your labor standards responsibilities or obligations. It’s important, as noted above, to develop a working knowledge of the HUD Labor Standards. You are strongly encouraged to contact Minnesota Housing staff with any questions that may arise in regard to labor standards issues and compliance.



## **Designation of a Labor Standards Officer (LSO)**

You must inform Minnesota Housing, in writing, who will be designated as your labor standards officer (LSO). The LSO is responsible for ensuring that the borrower complies with and enforces the labor standards requirements.

## **Request for a Wage Determination**

It is your responsibility to receive a wage determination from the U.S. Department of Labor (U. S. DOL) for each development. You may either retrieve your own wage determinations from the website at <http://www.access.gpo.gov/davisbacon> or contact Minnesota Housing's Labor Standards Officer to request a wage determination.

There are two important points to keep in mind:

- Wage determinations must be included in all bid specifications, bid documents, and contracts. Failure to include a wage determination, or the use of a wrong determination in all bid specifications, bid documents, and contracts, will not relieve the contractor or borrower from potential enforcement action.
- The borrower must have a formal construction contract with the selected general contractor. A borrower who is also the licensed general contractor must have formal construction contracts with all individual sub-contractors. All construction contracts must contain Davis-Bacon language binding the contractor to Davis-Bacon requirements (HUD 4010).

General Wage Determinations do not include an expiration date. General wage determinations may be modified by U.S. DOL at any time. Most changes occur on Fridays of each week. For purposes under the Minnesota Housing HOME Program, the "contract award" date or the date on which a wage decision is considered "locked in" is the date in which the commitment issued from Minnesota Housing to fund the development is signed by the borrower. Therefore, you are responsible for ensuring the initial wage decision issued is still applicable at the time of loan commitment. You may either contact the Minnesota Housing Labor Standards Officer to receive the most current wage decision or access the website to retrieve the most current wage decision that will apply to your development. If a borrower fails to use the applicable wage decision they may be liable for the difference between the wage rates used initially in the bid documents and the current rates that may apply. Therefore, Minnesota Housing suggests that property owners verify current wage rates with you. The contractor and all subcontractors must use applicable wage rates.

Wage modifications received less than 10 days before bid opening will be effective unless there is not enough time to notify bidders. In this case, a written report must be made and inserted in the contract file.

## **HUD Form 4010**

HUD Form 4010 Federal Labor Standards Provisions, must be included along with the Wage Determination in all bid specifications, bid documents, contracts and subcontracts. Inclusion by reference is not acceptable.

## **Contractor Debarment Request Form**

Before issuing a contract to selected contractors/subcontractors, you must verify that the contractors/subcontractors are not debarred or excluded from working on federally assisted developments. You must also conduct a review on the debarment list <http://epls.arnet.gov/> and submit the Contractor Debarment Form showing you verified the contractors. Documentation of contractor clearance should be kept in individual development files. If the contractor(s) are found to be on either HUD's Limited Denial of Participation list or the Debarment list, they are ineligible to work on your project.

## **Contract Status Report**

Submit the Contract Status Report to Minnesota Housing immediately after contracts have been awarded and wage decision has been locked in and the contractors/subcontractors have been cleared. One notice must be completed and submitted for each awarded contract/subcontract.

## **Contractor's/Subcontractor's Certification and Wage Requirement Report**

All contractors should complete the Contractors/Subcontractors Certification and Wage Requirement Report, to certify that they have received information regarding labor standards, prevailing wage requirements, and other relevant data. All intended employees and their respective classification, wage and fringe benefits must be listed on the form. The report must be provided to you before contractors and subcontractors begin their portion of work on the development. File each report in the appropriate contractor file. You may then crosscheck employee wages provided on the report against the wage decision when submitted, and use this when reviewing weekly payroll reports.

## **Pre-construction Conference**

After the contract is awarded hold a pre-construction conference with the borrower, the general contractor and all subcontractors who have been awarded contracts. The purpose of this conference is to review thoroughly the labor standards, equal opportunity requirements, and reporting procedures. Although HUD no longer requires pre-construction conferences, Minnesota Housing recommends that you hold a conference with general contractors and all subcontractors who are unfamiliar with the labor standards process. Minnesota Housing feels this will ensure that all procedures are followed in accordance with Davis-Bacon regulations.

When conducting a pre-construction conference provide each contractor with a copy of "Making Davis-Bacon Work, A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Construction Projects". This guide contains much of the information the contractor needs to know to comply with labor standards requirements.

During the conference, the contractor should review the wage determination and job classifications. If the wage determination does not include all job classifications that will be used under this contract, the contractor should indicate which additional classifications are needed.

If additional determinations are required, you must notify Minnesota Housing immediately, requesting additional wage determinations for the missing classifications.

Minnesota Housing must complete and send additional forms to the U.S. Department of Labor for additional classifications. You must allow at least 30 working days for the return of additional classifications.

## **Payroll Report and Statement of Compliance**

The contractors and all subcontractors working on the development must submit payroll reports weekly to the LSO assigned to the development. The use of the Department of Labor Payroll Report, Form WH-347, is recommended but not required. Providing an alternative payroll form or computer printout is acceptable; however, the form must include all information that is required on the WH-347. In addition, if an alternative form is used, a Statement of Compliance Form WH-348 must also be included.

All statements of compliance that are either part of the original payroll or attached to an alternative payroll form must include an original signature by the person authorized to certify payrolls on behalf of each contractor/subcontractor. Photocopied signatures, computer generated signatures, stamped signatures etc... are not acceptable.



## **Monitoring of Payroll Reports**

You are responsible for ongoing collection and review of weekly payroll reports as they are submitted. Wage rates reported on the payroll forms should be compared with the rates in the applicable wage decisions. The payroll reports also should be sequentially numbered beginning with the earliest payroll submitted.

Minnesota Housing will review all Davis-Bacon files prior to the release of any HOME assistance. If obtaining a Minnesota Housing construction loan, then all original payrolls and relevant documentation will need to be submitted to and approved by your region representative prior to release of funds.

## **Notices for Job Site**

Applicable wage decisions and rates must be posted at the work site for the duration of the contract work. As local administrator, you must make one or more site visits to determine that wage rates, notices, and weekly sign-in sheets were posted at the site. Documentation of the site visit should be kept in your development files.

## **Employee Interview Form**

You are responsible for interviewing selected employees of the contractor and or subcontractors to verify that classifications and wage rates are reported accurately on the payroll reports. Conduct these interviews with an adequate number of employees, from a representative sample of trades and classifications, to ensure that payroll reports are being accurately completed and in compliance with labor standards. The employee interview form should be used for this purpose. These reports should remain confidential and not be discussed with interviewee's employers. Should a worker have a complaint or you find a discrepancy between interviews and employee payrolls contact Minnesota Housing's Labor Standards Officer immediately to discuss resolution possibilities.

## **Report of Wage Restitution**

If any underpayment violations of labor standards are discovered, notify the contractor so that corrective action may be taken immediately. Any underpayment violations must be reported to Minnesota Housing using a Report of Wage Restitution form. Submit the form to Minnesota Housing at the time of restitution.

Keep in mind that the Data Privacy Act, Freedom of Information Act and confidentiality laws cover payrolls, employee interviews, and other personal documents; this information should be treated accordingly.

## **Weekly Report of Subcontractors on Job Site**

This form should be posted at the job site. Each week the subcontractors who are actively employed in the construction need to be recorded on this form and submitted to you at the time of payroll submission. If no subcontractor employees worked at the site during the week, state none. This report is for the use as a crosschecking tool in monitoring for compliance with labor standards.

## **Requirements at Development Completion**

As a local administrator, you must forward to your Regional Representative at development completion all original payrolls and related documentation for compliance monitoring. Any outstanding issues or non-compliance must be remedied prior to release of HOME assistance. Minnesota Housing will retain all original payrolls and relevant documentation in their files.

## **Borrower's Letter Certifying Compliance**

Upon completion, the borrower must submit a letter to Minnesota Housing certifying compliance with all Davis-Bacon Labor Standards requirements.

## **Final Labor Standards Compliance**

When a construction contract is completed and in full compliance with Labor Standards requirements, the LSO must complete and submit the Final Labor Standards Compliance Report to Minnesota Housing.

### **Required Submittals to the local administrator**

Before the initial closing, the borrower must submit a complete list of all contractors/subcontractors to be employed. This list must be updated, as additional subcontractors are determined.

The general contractor must give you the following weekly:

- a list showing all contractors/subcontractors working on the development during the workweek
- the original weekly payroll report for each contractor/subcontractor with employees working at any time during the week. Payrolls must be numbered consecutively with the initial and final reports indicated, and a completed and signed Statement of Compliance must accompany each report (Forms WH-347 and WH-348). These submittals must be made no later than seven (7) days following the reporting period covered by the payroll reports. Payroll reports submitted incompletely or incorrectly must be photocopied and the copy returned to the employer for correction. Incomplete or incorrect reports may delay payment

Within two weeks after completion of the rehabilitation work, the borrower or general contractor must submit to the local administrator a complete listing of all contractors/subcontractors who have worked on the development during the construction period; include the starting and ending date of work for each.

Upon completion, after you have received and approved all required payroll documents, the borrower shall prepare and submit to Minnesota Housing the Certification of Compliance with Labor Standards.

## **Disputes Concerning Labor Standards and Payment of Wages**

### ***Complaint and Investigation Processing Procedure***

The purpose for this procedure is to establish a uniform method of receiving, resolving and documenting complaints, investigations and/or disputes between contract administrator and employers/employees and conducting investigations where Davis-Bacon Labor standards apply.

Disputes arising out of Labor Standards provisions should be resolved in accordance with the policies and procedures as set forth by Minnesota Housing below, including disputes between the contractor/subcontractor and Minnesota Housing, HUD, the Department of Labor, or the employees or their representatives. Procedures may include review of disputes by Minnesota Housing staff, HUD staff, and the U.S. Department of Labor.

The following procedures will be followed to resolve complaints:

- The Minnesota Housing Labor Standards Officer is responsible for resolving any complaints and conducting all investigations received where Davis-Bacon Labor Standards apply.
- All complaints received by contracted administrators shall be referred to the Minnesota Housing Labor Standards Officer for investigation and resolution within ten days of receipt.
- The Minnesota Housing Labor Standards Officer will review complaints, request additional information if necessary, and issue a written notice of findings to all parties within 30 days of receiving all information required to make a decision.
- If a contractor or subcontractor disagrees with the findings of the Minnesota Housing Labor Standards Officer concerning payment of prevailing wage rates, overtime pay, or proper classifications, the contractor or subcontractor must submit a written request for a review of the decision and provide an explanation (along with supporting documentation) of the

disagreement, within 30 days of notification of findings. The Minnesota Housing Labor Standards Officer and the Minnesota Housing Assistant Commissioner of Multifamily will review the original findings and the submitted information to determine if the disagreement is justified and will notify the contractor (or subcontractor) of the determination in writing within 30 days of receiving the request for a review of decision.

If the contractor (or subcontractor) is not satisfied with Minnesota Housing's determination concerning any disputes/disagreements, they may request that the case be referred to HUD and/or the U.S. Department of Labor. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Such a request must be made within 30 days of the decision in number 4, above.

## Chapter 10 – Environmental Review

### Environmental Review Responsibilities

The environmental review of HOME-assisted developments is a requirement of the National Environmental Policy Act (NEPA). This section, based on 24 CFR Part 58, outlines review responsibilities under NEPA for both Minnesota Housing and local administrators.

### Laws and Regulations

In addition to NEPA and the National Affordable Housing Act (NAHA), other laws and regulations apply to the HOME Program with regards to such areas as historic properties, flood plain management and wetland protection, coastal zone management, sole source aquifers, endangered species, wild and scenic rivers, air quality, airport clear zones, farmlands protection, and the HUD environmental standards. Before committing any HOME assistance, you must have Minnesota Housing's approval that the development is in compliance with the requirements and obligations of these laws and authorities.

### Local Administrator Responsibilities

The local administrator is responsible for completing an Environmental Review Record (ERR) and complying with the requirements of NEPA, as amended, **before** requesting the release of HOME assistance. Minnesota Housing will not approve the commitment of HOME assistance until the appropriate environmental review procedures have been completed. The ERR is based on a Statutory Checklist, located on the HOME Rental Rehabilitation website.

### Minnesota Housing Responsibilities

Minnesota Housing is responsible for reviewing the ERR and determining whether the development is categorically excluded (no further environmental review is necessary) or if further environmental review is necessary by completing an Environmental Assessment. As the Responsible Entity, Minnesota Housing will draft any public notices that may be necessary to publish and/or disseminate to the public and take comments and issue final approval for the local administrator to move forward with their application.

### Limitation on Activities

You may not expend or commit any HOME assistance or other funds to an activity until Minnesota Housing approves the ERR. You cannot incur costs for an activity prior to approval of the ERR.

For activities requiring an Environmental Assessment, you may not expend any funds or incur costs on any activity until Minnesota Housing has given final approval to move forward.

### Environmental Review Record

You must prepare and maintain a written ERR for each development, based on the Statutory Checklist form. Be sure to include all relevant documents, public notices, written determinations, correspondence, or evidence of action required by the Statutory Checklist.

## **Project Aggregation**

For environmental review, the term “project,” means an activity or a group of related activities designed to accomplish, in whole or in part, a specific goal. You may have a number of projects under a single ERR. Aggregating projects into one ERR allows you to consider their combined environmental effects. Since each project or activity must be reviewed, project aggregation will reduce the number of ERRs you must prepare.

Local administrators may group and evaluate, as a single undertaking, all individual projects that relate geographically, functionally, and chronologically. For example, an ERR may include multiple rental rehabilitation related activities in a local municipality. These activities could be aggregated as a project program labeled housing revitalization. An ERR would be prepared for the housing revitalization and would consider the combined environmental effect of the construction activities.

The ERR may be prepared for a comprehensive project encompassing an entire scope of activities, even if some of them are not HOME-assisted or are carried out by someone else. The ERR of a comprehensive project should take into account the relationship among component activities and the cumulative environmental impacts of the entire scope of activities.

## **Categorizing Projects**

Under NEPA there are four categories of projects:

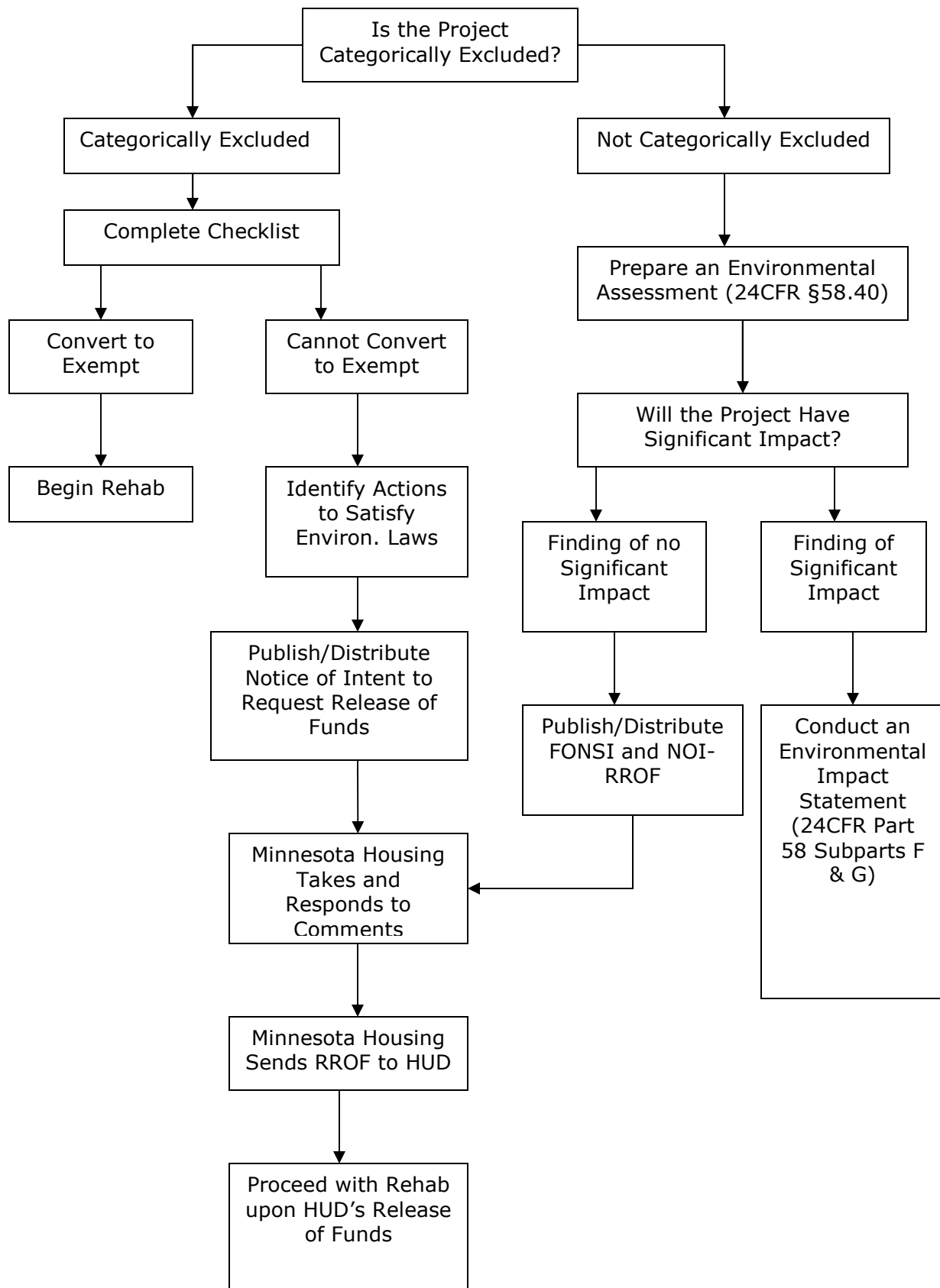
1. Exempt
2. Categorically Excluded
3. Environmental Assessment
4. Environmental Impact Statement

After identifying projects through the aggregation process, the local administrator should determine each project’s category. An ERR must be prepared and maintained for each project; however, the documentation and publication requirements differ for each project category.

## **Basic Environmental Review Process**

Environmental review activities should be part of your work plan. Projects may require time periods for public comments before the release of funds. You must take these time periods into account when planning the schedule of activities and funds request(s) for your project.

The following is a flowchart for the Environmental Process Minnesota Housing follows when reviewing the ERR:



## **Environmental Review of Categorically Excluded Activities**

The majority of developments funded under the Minnesota Housing HOME Program will be categorized as categorically excluded. The term "categorically excluded" means that the activity does not require an environmental assessment or an environmental impact statement and a finding of no significant impact under NEPA, except in extraordinary circumstances in which a normally excluded activity may have a significant impact on the environment. If items on the Statutory Checklist require an action, a Notice of Intent to Request the Release of Funds must be published and/or disseminated and Minnesota Housing must file a Request for Release of Funds with HUD and not proceed with work until HUD has approved the release of funds.

### **Conversion to Exempt Activities**

If the development consists solely of categorically excluded activities listed in 24 CFR 58.35(a)(1) to (6), it may be converted to an exempt activity, provided there are no circumstances that require compliance with any of the federal laws and authorities cited in the statutory checklist and 24 CFR 58.5. The ERR must document the basis for converting a categorically excluded activity to an exempt activity and the determination will be made by Minnesota Housing.

### **Rehabilitation May be a Categorically Excluded Activity**

#### Which Projects are Categorically Excluded?

A project of one- to four-units will qualify as "categorically excluded" when:

- The footprint of the building is not increased in a floodplain or
- The land use is not changed, and
- The density is not increased beyond four units.

Projects of five or more units are categorically excluded when:

- Unit density is not changed more than 20%, and
- The estimated cost of rehabilitation is less than 75% of the total estimated cost of replacement after rehabilitation.

If any of the above standards are not met, the activity is considered "major rehabilitation" for purposes of the "HUD Guide to Environmental Compliance: NEPA-Related Statutes, Authorities and Requirements."

#### **Note:**

The local administrator shall comply with the NEPA requirements for environmental assessment when it determines that a categorically excluded activity, because of specific circumstances and/or conditions, may have a significant environmental effect.

#### What is the Significance of an Activity Being Converted from Categorically Excluded to Exempt?

If completion of the statutory checklist shows that no action is required to comply with the underlying statutes, the project or activity may be considered "exempt" (see 24 CFR §58.34). As an exempt activity, a "Request for Release of Funds and Certification" is not required. If you determine that an activity may be converted to an Exempt activity, make that recommendation to Minnesota Housing. Minnesota Housing will make the final determination and document its decision.

#### What is Required for Projects that are Categorically Excluded?

A statutory worksheet must be completed for all projects. Minnesota Housing requires that the local administrator assemble the information, but the final determination is Minnesota Housing's. 24 CFR Part 58 identifies which activities trigger a specific review and remedial action.

The ERR must show a review of the following items for rehabilitation:

- Contamination and toxic substances
- Explosive and flammable operations (when making a building habitable that has been vacant for more than one year, or when increasing density).
- Floodplain management
- Historic preservation (for properties built before 1950, a written "No Effect Determination" from the State Historic Preservation Officer (SHPO)
- Wild and Scenic Rivers.

"Major rehabilitation" may require reviews of the following items, but see the "HUD Guide" for specific guidance:

- Air quality.
- Airport hazards.
- Coastal zone management.
- Endangered species.
- Environmental justice.
- Wild and Scenic Rivers.

Submission of the ERR to Minnesota Housing shows that the development is categorically excluded. All forms are required for release of funds.

If there are no items on the statutory worksheet that require compliance, categorically excluded activities will be considered to be converted to exempt activities.

Those categorically excluded activities that are not converted to exempt activities require publication of the Notice of Intent to Request Release of Funds by Minnesota Housing and submission of a Request for Release of Funds by Minnesota Housing to HUD before Minnesota Housing will approve any activity on the development.

#### What if a Project is not Categorically Excluded?

If the activity is not categorically excluded, an environmental assessment (see 24 CFR Part 58, subpart E), and possibly an environmental impact statement, will be required.

The following is an outline of the ERR process and the responsible parties:

<b>Activity</b>	<b>Administrator</b>	<b>Minnesota Housing</b>
Complete the statutory checklist.	X	
Ensure and document that all required environmental actions are taken so that the activity complies with all applicable laws.	X	X
Determine whether the activity is "categorically excluded."		X
Determine whether the activity may be converted to an "exempt" activity.		X
If the activity is determined to not be "exempt," arrange for the publication of the "Notice of Intent to Request Release of Funds".		X
Take comments from the public on the "Notice of Intent to Request Release of Funds."		X
Submit to HUD the "Request for Release of Funds and Certification" form (HUD-7015.15).		X
Notify the administrator that the activity may proceed after either determining that the activity is "exempt," or after receiving the "Authority to Use Grant Funds" form (HUD 7015.16) from the HUD Field Environmental Officer.		X
Document all decisions, publications, and notices in the Environmental Review Record to be kept with the project file.		X



If a development is not categorically excluded or exempt and requires further environmental review, contact your Regional Representative for further direction.

## **Additional Minnesota Housing Environmental Review Requirements**

### ***Asbestos-containing Materials***

Dwelling units and common areas must be free from friable asbestos-containing materials. Existing materials that are or could become friable must be abated or encapsulated. Asbestos-containing materials that are intact and located in spaces inaccessible to residents may be left intact.

### ***Phase I Environmental Site Assessment***

All developments obtaining Minnesota Housing loan(s) in excess of \$300,000 are required to have a Phase I Environmental Site Assessment per the American Society for Testing and Materials E1527 including lead testing per 24 CFR 35.120 (if built pre 1978) and an asbestos survey with remedies. Such developments must retain a reliance letter from the Assessor.

To assist you in successfully complying with Minnesota Housing Environmental Assessment requirements, Minnesota Housing's Environmental Assessment policies are available on the website at [http://www.mnhousing.gov/housing/architects/multifamily/MHFA\\_000489.aspx](http://www.mnhousing.gov/housing/architects/multifamily/MHFA_000489.aspx).

# Chapter 11 – Uniform Relocation Act

## General

The purpose of the Uniform Relocation Act (URA) is to provide displaced persons with fair, equitable treatment and protection from disproportionate injury by projects designed to benefit the public as a whole. The URA is a government-wide legislation. This section covers the URA as it applies to HOME assistance.

## Guiding Statutes and Regulations

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA); this applies to displacement that results from acquisition, demolition, or rehabilitation for HUD-assisted projects carried out by public agencies, nonprofit organizations, private developers, or others and real property acquisition for HUD-assisted projects (whether publicly or privately undertaken);
- Section 104(d) of the Housing and Community Development Act of 1974; and
- Individual HUD program regulations.

## Relocation Reference Material and Resources

- Handbook 1378. Tenant Assistance, Relocation and Real Property Acquisition, issued September 1990. This Handbook consolidates relocation requirements for all HUD programs in one document.
- Handbook 1374. Tenant Assistance, Relocation and Real Property Acquisition, HUD CPD Staff Responsibilities, issued March 11, 1992. This handbook provides instructions for HUD Field Staff for monitoring and technical assistance.

Federal regulations require that all reasonable steps be taken to minimize the displacement of persons (families, individuals, businesses, non-profit organizations and farms) when a development is HOME-assisted. Residential tenants must be given a reasonable opportunity to lease and occupy decent, safe, sanitary, lead-safe and affordable housing in the development when it is completed.

This section provides an overview of these federal requirements and their application to Minnesota Housing's HOME Program. For a more thorough understanding of the regulations pertaining to displacement and relocation assistance, please review the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 at 49 CFR Part 24.

The HOME Program funds rehabilitation to enhance the long-term benefit to the development, borrowers, and its tenants. Minnesota Housing does not intend to use HOME Program for permanent relocation benefits. **The HOME Program may be used to rehabilitate structures only if the rehabilitation will not cause the displacement of existing tenants. Therefore, it is essential that you and the borrower thoroughly review applications to assess the potential for displacement. You should also take care to follow the policies as given below in providing information to tenants to ensure that permanent relocation benefits are not inadvertently triggered by displacement as defined by the Uniform Relocation Act.** Tenants living in the property at the time of application, and any tenants legally moving into the property any time after application, and before development completion, must be informed of their rights. The potential for displacement may be a valid reason not to fund a development. Any permanent relocation expenses will be the sole responsibility of the borrower and will not be considered part of borrower's match.

Certain notices and information must be given to all tenants at specific times throughout development. If these requirements are not followed, tenants could easily move from a development, and be eligible for displacement and relocation assistance. Any displacement and permanent relocation expenses incurred will be the sole responsibility of the borrower. Minnesota Housing will not authorize the use of HOME assistance for displacement or permanent relocation purposes.

Should tenants be displaced during construction but prior to the release of HOME assistance, Minnesota Housing may at its discretion refuse to fund the development.

### **Definition of Displaced Person**

The term “displaced person” means any tenant, regardless of income, who is forced to move from the property permanently as a direct result of rehabilitation, demolition, or acquisition of a HOME-assisted development. This includes physical displacement caused by overcrowding, loss of a unit, etc., or economic displacement due to an increase in rents.

### **Displacement Triggers**

Displacement occurs when a person or their property is displaced as a DIRECT RESULT of a federally assisted acquisition, demolition or rehabilitation project.

DIRECT RESULT includes the following:

- The person is required to move from the property after the property owner issues a notice to vacate or refuses to renew a lease in order to avoid relocation assistance (at application or site control if later)
- A person who leaves prior to the date described above who HUD or Minnesota Housing determines was displaced as a direct result of rehabilitation, demolition, or acquisition
- The person leaves for whatever reasons after initiation of negotiations AND the necessary notices to assure that the person was fully informed about relocation rights and assistance were not given or were not given in a timely fashion.
- The person leaves the property after initiation of negotiations because of a decent, safe, and sanitary and affordable unit in the property was not offered.
- The person leaves the property because of unreasonable temporary relocation requirements or unreasonable terms for permanent moves within the property.
- A nonresidential tenant who receives a Notice of Non-displacement but moves permanently if the terms and conditions of remaining are not reasonable.

### **Who is Not Displaced**

Persons not displaced include those who:

- Were evicted for cause, BUT not if the eviction is to evade paying relocation assistance.
- Have no legal right to occupy the property (e.g. squatters).
- Occupied the property for the purpose of obtaining relocation benefits.
- Before leasing and occupying the property but after application for project funding, receive written notice of the possibility that displacement or an increase in rent may occur and that relocation assistance will not be provided.
- Retain the right of use and occupancy of the property following acquisition (life estates).
- After being fully informed of their rights, waive them.
- Are determined not to be displaced as a direct result of the project (and HUD agrees in writing- e.g. professional relocatees).
- Were required to move out for a short period to facilitate emergency repairs, as long as certain conditions are met.
- Are owner-occupants of the property who move as a result of an arms length (voluntary) acquisition or as a result of voluntary rehabilitation or demolition.

- Leave due to code enforcement, unless the code enforcement results in rehabilitation or demolition for an assisted project. An owner-occupant who is required to move permanently as a direct result of this rehabilitation or demolition may be eligible for relocation assistance.
- After receiving a notice of eligibility, are notified in writing that they will not be displaced. Such a notice cannot be delivered unless the person has not moved and the agency agrees to reimburse the family for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of eligibility.
- Are owner-occupants who voluntarily apply for rehabilitation assistance on their property. When the rehabilitation work requires the property to be vacant for a period of time (such as during lead paint abatement or removal), agencies are encouraged to provide consistent temporary relocation assistance.

## Temporary Relocation

Residents who are not required to move permanently may be required to move **temporarily** if all conditions of the move are reasonable. Those to be temporarily relocated must receive “reasonable” advance written notice of the location, terms and conditions of the temporary move and of their right to reimbursement of all reasonable out-of-pocket expenses. Minnesota Housing must review and approve a written plan of action outlining the relocation activity and timelines, including a copy of the notice given to tenants. The notice should suggest comparable units and rents and give information about the timeline, payment for moving expenses, utility hookups, and the option to move back to the original unit after rehabilitation. The borrower must obtain a written response from each household that shows the tenants’ acceptance of the temporary relocation and retain the responses in the development file.

The local administrator must assist the property owner to prepare an outline of the relocation activity showing tenants’ names, unit number and rent, address, size and rent of the comparable unit, other expenses paid, date of the move, and projected date of the move back to the original unit.

**If these procedures are not followed, a tenant would be considered displaced and eligible for a displacement and relocation payment.** The payment is equal to 42 times the difference between the replacement unit rent plus utilities and the lesser of 30% of the tenant’s adjusted monthly income or the tenant’s pre-rehabilitation rent.

Contact your Minnesota Housing Regional Representative for further assistance with temporary relocation.

## Notice Requirements

The following notices must be provided to tenants to ensure that the requirement for relocation benefits is not triggered. Retain copies of the notices and document how they were delivered. The following notices are **required**:

### ***Served to Existing Households at Loan Application***

#### **General Information Notice (GIN):**

Served at loan application to existing occupants. This notice informs occupants of the planned rehabilitation activities, the impact on them, the proposed rents, the relocation or rental assistance that may be available to them, and of their rights under the URA. The GIN stresses that the household should not move at the time of notice.

### ***Served to Households that Move in After Loan Application***

#### **Move-in Notice:**

New households must be given a Move-in Notice explaining the project that has been proposed and informs residents that they may be displaced or sustain a rent increase as a result and that they will not be entitled to relocation assistance in either event.

## **Served to Households at Loan Commitment**

### **Notice of Non-Displaced:**

This notice informs households who will remain in the project after completion of the assisted activity of their rights and of the terms and conditions of their remaining at the property.

**OR**

### **Temporary Relocation Notice:**

This notice informs households who will be temporarily relocated of their rights and of the conditions of their temporary move. This notice includes addresses of comparable replacement apartments, and information on any assistance available.

**OR**

### **Notice of Eligibility:**

This notice informs households to be displaced of their rights, levels of assistance, and procedures for obtaining the assistance under the URA.

### **90 and 30 Day Notices:**

This notice informs displaced households of the day by which they must vacate the property. Note that displaced households normally may not be given less than 80 days to vacate their residence.

## **When and How to Serve Notices**

- Notices must be issued by the property owner.
- Notices must be personally served or sent by certified or registered first-class mail, return receipt requested. (certified mail is less costly)
- It is not enough to have the borrower or property manager state that notices were delivered. There must be evidence of delivery on file for each affected person. Copies must be sent to you.
- If the project will not result in rent increases and will not require temporary or permanent relocation, the general notice and Notice of Non-displacement may be served by posting it in an accessible location and providing a copy to the tenant representative (if applicable).
- Notices should be issued as soon as feasible. To avoid relocation problems administrators should establish policies defining when an application is received.

## **After Completion**

Future rent increases must be submitted to you for review and approval to assure that no displacement or relocation will occur. Large rent increases could cause tenants to claim displacement, thereby triggering URA. For more information on Rent Increases, refer to *Chapter 2: Participation Procedures*.

## **Record-keeping Requirements**

You must have readily available records demonstrating compliance with the URA and applicable relocation regulations. Keep records for at least five years after the later of:

- The date the person has received all of the assistance to which the person is entitled, or;
- The date the development is completed.

The records shall include the following:

- Name and address of all households occupying the property when the application is submitted by the grantee
- Name and address of all persons moving into the property on or after the application date but before completion of the development
- Name and address of all persons occupying the property immediately following completion of the development

- Tenant data should include the occupant's name, address, racial/ethnic group classification, and date of initial occupancy, age, sex, income of all members of the household and monthly rent and utility costs.

### **Persons Not Displaced**

Documentation must be sufficient to preclude any possible later claim by tenants that they were displaced by the development.

### **Displaced Person**

For displaced persons, prepare a separate case file for each affected person

## Chapter 12 – Management and Leasing

### Lease

For HOME Assisted Units, the lease between a tenant and an owner must be for not less than one year, unless by mutual agreement between the tenant and the borrower.

As local administrator, you shall review current leases and work with borrowers to revise current lease documents. The leases may not contain the prohibited lease terms listed below. Property owners can use the HOME Lease Addendum (HOME Form #22) to cover the mandatory lease terms and disclosure requirements described in this section.

### Prohibited Lease Terms

A lease may not contain any of the following provisions:

#### Agreement to be sued

- Tenant agreement to be sued, admit guilt, or accept a judgment in favor of the borrower in a lawsuit brought in connection with the lease.

#### Treatment of property

- Tenant agreement that the borrower may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to disposition of personal property remaining in the housing unit after the tenant has moved out. The borrower may dispose of this personal property in accordance with state law.

#### Excusing the borrower from responsibility

- Tenant agreement not to hold the borrower or the borrower's agents legally responsible for actions or failure to act, whether intentional or negligent.

#### Waiver of notice

- Tenant agreement that the borrower may institute a lawsuit without notice to the tenant.

#### Waiver of legal proceedings

- Tenant agreement that the borrower may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

#### Waiver of jury trial

- Tenant agreement to waive any right to a jury trial.

#### Waiver of right to appeal court decision

- Tenant agreement to waive right to appeal or to otherwise challenge in court a decision in connection with the lease.

#### Tenant chargeable with cost of legal actions regardless of outcome

- Tenant agreement to pay attorney fees or other legal costs even if the tenant wins a court proceeding by the borrower against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.



## **Mandatory Lease Terms**

All leases must contain the following provisions:

### HOME Program Tenant Surveys

- On an annual basis, lessee shall certify the household's income and composition by completing and signing a Tenant Survey form which is provided by lessor.
- Lessor may terminate the lease or refuse to renew the lease of a household for failure to supply the completed and signed Tenant Survey form within thirty (30) days of the request.

### Third Party Income Verifications

- Lessee shall sign consents to third party income verification as necessary and reasonably requested by lessor.
- Lessor may terminate the lease or refuse to renew the lease of a household for failure to supply the consent to third party income verification within thirty (30) days of the request.

### Right of Access

- Lessee shall sign an acknowledgement that the Owner, or his/her duly authorized agents, employees or representatives, upon reasonable notice to the Household, shall have the right of access to the Dwelling Unit for the purpose of examining the condition thereof and for making improvements and repairs; and for the purpose of showing the Dwelling Unit for re-rental.

### Lease

- The lessee and lessor shall sign an acknowledgement that the lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.

## **Termination of Tenancy**

A borrower may not terminate the tenancy or refuse to renew the lease of a tenant of a HOME-assisted development except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; or for other good cause. For any termination or refusal to renew, the borrower must serve on the tenant a written notice specifying the grounds for the action, at least 30 days in advance of such action, **regardless of Crime-free Housing Policies.**

## **Maintenance**

A borrower of a HOME-assisted development must continue to maintain the property with all applicable state and local codes, rehabilitation standards, ordinances, HQS, zoning ordinances and lead-based paint standards under 24 CFR Part 35 through the Effective Period.

Refer to *Chapter 7: Lead Hazard Evaluation and Reduction* for details regarding the borrower's ongoing responsibilities to maintain the lead safety of rehabilitated units.

## **Tenant Selection Criteria**

The borrower must adopt written tenant selection policies and criteria that:

- are consistent with the purpose of providing housing for low and very-low income families
- are related to HOME Program eligibility criteria and the tenant's ability to perform the obligations of the lease
- provide for selection of tenants from an existing written waiting list in the chronological order of their application
- give reasonable consideration to families that would have preference for admission to Public Housing.
- give prompt written notification to any rejected application of the grounds for any rejection

## Disclosure Requirements for Lead-based Paint

The property owner must provide all tenant households with the EPA-approved lead hazard pamphlet *Protect Your Family From Lead in Your Home*. This should be given out at move-in or when the application for HOME funds is made. For tenants residing at the property during renovation, the property owner must also distribute *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools* within 30 days of commencement of the rehabilitation. The property owner must have on file a Lead-Based Paint Acknowledgment of Disclosure signed by the Lessee. The signed Acknowledgement of Disclosure must be retained for three years from the beginning of the leasing period.

## Chapter 13 – Rural Development

### General

Rural Development (RD) properties typically need significant rehabilitation; each of these properties will require RD construction analyst or architectural staff review and approval of the scope of work. Due to the extensive scope of work, interim construction financing is strongly recommended. Below are the following first steps you must take when approached by a property owner of an RD development:

- Have the property owner contact the local RD office prior to submitting a HOME Program application to discuss RD's procedure for applying for Federal loans.
- Ensure that RD's construction analyst or architect has inspected the site and assisted with the scope of work.
- For developments obtaining less than \$100,000 in HOME assistance, borrowers will need to obtain written approval from RD for use of development reserves as the 25% match.

The local administrator is required to ensure that RD's construction analyst or architect has inspected the site and assisted with the scope of work.

RD allows over-income tenants to continue to reside in HOME-assisted units, but cannot increase their rents over the stated Note Rate Rent; therefore, RD developments will be structured as mixed-income developments. Minnesota Housing will only allow 80 percent of the units to be financed with HOME assistance, when the Note Rate Rents exceed the applicable HOME Program Rent Limits.

### Example:

If you have 10 units only a maximum of 8 units may receive HOME assistance.  $(10 \times 80\% = 8)$

Minnesota Housing does not want to tie up these limited resources; therefore, Minnesota Housing will require that all RD approvals for acquisition be obtained prior to submitting the application. If Minnesota Housing receives an application without the necessary RD approvals, the application will be returned.

After submission of the completed application and required documentation, you will forward it to Minnesota Housing for review. Minnesota Housing will send an executed "Notice of Default" form to you who will then forward that form to the appropriate RD office along with their request for junior lien approval.

### Note:

Minnesota Housing will not issue a loan commitment until we have received written consent from RD for junior lien approval.

### Preservation of Rental Assistance

In addition to the Minnesota Housing HOME Program Declaration of Covenants and Restrictions, any property owner of a development receiving Rental Assistance (i.e. Rural Development, HUD 236, Section 8, etc.) will be required to sign a rental-assistance Declaration of Covenants and Restrictions, which contains restrictive covenants preventing the property owner from opting-out of federal rental assistance contracts.

## **Development Monitoring**

Annually, RD performs third-party tenant income verification. You may obtain and submit RD income verifications for recertification purposes during the Effective Period.

Annually, RD inspects 20% of its development units. Minnesota Housing will not accept RD inspections and therefore requires you to inspect the units per the Development Monitoring Scheduled as outlined in Chapter 2 of this Procedural Manual.